

1                               BEFORE THE  
2                               ILLINOIS COMMERCE COMMISSION  
3  
4       IN THE MATTER OF:                               )  
5   )  
6       COMMONWEALTH EDISON RATE CASE,                               )  
7       Proposed General increase in                               ) No. 05-0597  
8       rates for delivery service                               )  
9       (tariffs filed on August 31,                               )  
10      2005.)   )

11  
12   Chicago, Illinois  
13   March 22, 2006

14      Met, pursuant to notice, at 10:00 a.m.

15      BEFORE:  
16          MR. GLENNON DOLAN and MS. KATINA HALOULOS,  
            Administrative Law Judges

17      APPEARANCES:

18               MR. RICHARD G. BERNET  
                MS. ANASTASIA POLEK-O'BRIEN  
19               10 South Dearborn Street, Suite 3500  
                Chicago, Illinois 60603  
20               Appearing for for ComEd;

21  
22

1        APPEARANCES (Continued)

2                MR. RICHARD C. BALOUGH  
3                MS. ELLEN PARTRIDGE  
4                53 W. Jackson Boulevard, Suite 956  
5                Chicago, Illinois 60604  
6                       Appearing for Chicago  
7                       Transit Authority;

8                MR. MARK KAMINSKI  
9                AND MR. RISHI GARG  
10                100 W. Randolph Street  
11                Chicago, Illinois 60601  
12                       Appearing for The People  
13                       of the State of Illinois;

14                DLA PIPER RUDNICK GRAY CARY US, LLP  
15                MR. CHRISTOPHER J. TOWNSEND  
16                MR. WILLIAM A. BORDERS  
17                203 N. LaSalle Street, Suite 1900  
18                Chicago, Illinois 60601  
19                       Appearing for The Coalition of  
20                       Energy Suppliers  
21                       (Direct Energy Services, LLC,  
22                       MidAmerican Energy Company, Peoples  
                 Energy Services Corporation, and  
                 US Energy Savings Corp.)

23                MR. RONALD D. JOLLY and  
24                MR. J. MARK POWELL  
25                30 North LaSalle Street, Suite 900  
26                Chicago, Illinois 60602  
27                       Appearing for the City of Chicago;

28                LEADERS, ROBERTSON & KONZPU, by  
29                MR. ERIC ROBERTSON  
30                Granite City, Illinois  
31                       AND  
32                MR. CONRAD REDDICK  
33                1015 Crest Street  
34                Wheaton, Illinois 60188  
35                       Appearing for IIEC;

1        APPEARANCES (CONTINUED)

2                EIMER, STAHL, KLEVORN & SOLBERG, by  
3                MR. RONIT BARRETT  
4                224 South Michigan Avenue, Suite 1100  
5                Chicago, Illinois 60604  
6                Appearing for Midwest  
7                Generation EME, LLC;

8                FOLEY & LARDNER, by  
9                MR. E. GLENN RIPPIE and  
10                MR. JOHN RATNASWAMY  
11                321 North Clark Street, Suite 2800  
12                Chicago, Illinois 60610  
13                Appearing for ComEd;

14                MR. ALLAN GOLDENBERG  
15                MS. MARIE D. SPICUZZA  
16                Assistant State's Attorney  
17                69 West Washington, Suite 3130  
18                Chicago, Illinois 60602  
19                Appearing for Cook County  
20                State's Attorney's Office;

21                MS. CARLA SCARSELLA  
22                MR. JOHN FEELEY  
23                MR. CARMEN FOSCO  
24                MR. SEAN BRADY  
25                160 North LaSalle Street, Suite C-800  
26                Chicago, Illinois 60601  
27                Appearing for the ICC Staff.

28                SIDLEY & AUSTIN, by  
29                MR. DALE THOMAS  
30                One South Dearborn  
31                Chicago, Illinois  
32                (312) 853-7787  
33                Appearing for Commonwealth Edison Company;

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35  
36  
37  
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40  
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1 APPEARANCES (CONTINUED)

2 GIORDANO & NEILAN, by  
3 MR. PAUL NEILAN  
4 360 North Michigan  
5 Chicago, Illinois 60601  
6 Appearing on behalf of of the  
7 Building Owners and Managers  
8 Association of Chicago;

9 MR. LARRY GALLOP, for U.S. Department of Energy

10 HINSHAW & CULBERSON, by  
11 MR. EDWARD GOWER  
12 401 South Knight, Suite 200  
13 Springfield, Illinois 61721.  
14 for Metra;

15 SULLIVAN REPORTING COMPANY, by  
16 Carla L. Camiliere, CSR,  
17 License No. 084-003637

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1	<u>I N D E X</u>					
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
3	KATHERINE HOUTSMA					
4				468	490	
5					512	
6					518	
7	PETER LAZARE					
8		548	553			
9			559			
10			572			
11			581			
12			591			
13			611			
14	STEVEN WALTER					
15		657	660	691	695	
16	MICHAEL J. MEEHAN					
17		697		771		
18			775			
19	JEROME P. HILL					
20		790	804			
21			827			
22						

1	<u>E X H I B I T S</u>		
2	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
3	ComEd #1 STAFF		490
4	#6.0 & 7.0 ComEd		552
5	#2	603	606
	#3	605	637
6	CITY #1.0 & 2.0		659
7	#1 ComEd	695	
8	#26 & 43 CES		699
9	#1	723	724
	#2	731	734
10	#3	747	748
	#4	749	750
11	#2 STAFF CROSS		770
12	# 1,2,4,5,6, & 7 STAFF (confidential attachments)		784
13	# 3 ComEd		784
14	#5.1 schedules A2,A4,A5,B1 B2,B2.1,B2.4,B7,B10,C1,C2,		788 788
15	C2.1,C2.4,C2.6,C2.7,C2.11&C5.4 #5.2,WPB 2.4,WPC 2.1 & WPC 2.11		788 788
16	#1-18		789
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1 JUDGE DOLAN: By the power and authority of the  
2 Illinois Commerce Commission, I call docket 05-0597,  
3 entitled, Commonwealth Edison, a proposed general  
4 increase of electric rates, general restructuring of  
5 rates, price unbundling for unbundled service rates  
6 and revision of other terms and conditions of service  
7 support.

8 Will the parties please identify  
9 themselves for the record.

10 MS. POLEK-O'BRIEN: For Commonwealth Edison  
11 Company, Darryl. M. Bradford, Anastasia  
12 Polek-O'Brien, Richard Bernett. Also Glenn Rippie  
13 and John Ratnaswamy for the law firm of Foley and  
14 Lardner.

15 MR. THOMAS: Dale Thomas, Sidley Austin, LLP,  
16 One South Dearborn Street, Chicago, Illinois 60603  
17 for Commonwealth Edison.

18 MS. SORDENA: Julie Sordena and Robert Kelter  
19 for behalf of the Citizens Utility Board, 208 South  
20 LaSalle, Suite 1760, Chicago, Illinois 60604.

21 MR. NEILAN: Paul Neilan of the law firm  
22 Giordano and Neilan, 360 North Michigan, Chicago,

1 Illinois 60601, appearing on behalf of of the  
2 Building Owners and Managers Association of Chicago.

3 MR. FOSCO: Appearing on behalf of Staff of the  
4 Illinois Commerce Commission, Carmen Fosco, John  
5 Feeley, Sean Brady and Carla Scarsella, 160 North  
6 LaSalle Street, Suite C-800, Chicago, Illinois 60601.

7 MR. GOLDENBERG: Alan Goldenberg and Marie  
8 Spicuzza, on behalf of the Assistant State's Attorney  
9 on behalf of the Cook County State's Attorney's  
10 office, 69 West Washington, Suite 3130, Chicago,  
11 Illinois 60602.

12 MR. GARG: Rishi Garg and Mark Kaminski of the  
13 office of the Illinois Attorney General, 100 West  
14 Randolph, 111, Chicago, Illinois 60601 on behalf of  
15 the People of the State of Illinois.

16 MR. JOLLY: On behalf of the City of Chicago,  
17 Ronald D. Jolly and Mark Powell, 30 N. LaSalle Street  
18 Chicago, Illinois 60602.

19 MR. BALOUGH: Good morning.

20 Appearing on behalf of the CTA,  
21 Richard Balough, Ellen Partridge, and Kevin Laughlin.  
22 My address is 53 West Jackson Boulevard, Suite 956,



1 Chicago.

2 MR. ROBERTSON: Eric Robertson and Conrad  
3 Reddick. Robertson and Townsend (phonetic) P.O.  
4 Box 735, 1939 Delmar, Granite City, Illinois 62049.

5 Conrad Reddick is at 1015 Crest,  
6 Wheaton, Illinois 60187, on behalf of the Illinois  
7 Industrial Energy Consumers.

8 MR. GOWER: Ed Gower with the law firm Hinshaw  
9 and Culbertson, LLP, 401 South Knight, Suite 200,  
10 Springfield, Illinois 61721.

11 MR. BORDERS: William A. Borders and Christopher  
12 Townsend, Dla Piper Rudnick Gray Cary Us, LLP, 203  
13 N. LaSalle Street, Suite 1900, Chicago, Illinois  
14 60601.

15 JUDGE DOLAN: Let the record reflect there are  
16 no other appearances at this time.

17 We are going to, I believe, complete  
18 just re-direct.

19 Mr. Fosco, you completed your cross,  
20 right.

21 MR. FOSCO: Yes.

22 JUDGE DOLAN: Okay. All right. We'll just go

1 ahead and start with the re-direct.

2 Ms. Houtsma, I just want to remind you  
3 that you are still under oath.

4 REDIRECT EXAMINATION

5 BY

6 MR. THOMAS:

7 Q Ms. Houtsma, do you recall questions being  
8 asked of you by Staff counsel and others concerning  
9 something called a pension asset?

10 A Yes.

11 Q What is a pension asset?

12 A For purposes of the rate base in this  
13 proceeding, the pension asset represents funds that  
14 have been contributed to ComEd's pension funds to  
15 satisfy future pension obligations in an amount above  
16 and beyond what has previously been collected from  
17 customers through rates.

18 And it is -- it's an amount that no  
19 party has disputed as been funded, you know, by a  
20 party other than ratepayers in the proceeding.

21 So ComEd has made this contribution to  
22 the pension fund. It will be used to satisfy ComEd's

1 future pension obligation.

2 We'll get recovery of the asset  
3 through future pension accruals and collection of  
4 those through the normal ratemaking process.

5 By including the asset and rate base  
6 in this proceeding, we are simply asking for a return  
7 on the funds that have been invested prior to receipt  
8 of those funds from customers.

9 Q So is this pension asset simply an  
10 accounting matter?

11 A No. It is not a product of accounting.

12 It is, you know, a reflection of the  
13 fact that \$803 million in cash was contributed to  
14 ComEd's pension plan to satisfy its future  
15 obligations.

16 It has a very real value in this case  
17 in the sense that the contribution of those funds  
18 will generate additional trust fund earnings.

19 Those trust fund earnings have the  
20 effect of reducing the pension expense by  
21 \$30 million. And that \$30 million reduction has been  
22 reflected in ComEd's rate request. So there is a

1       very real economic substance to the contribution.

2               Q     Speaking of accounting, do you recall  
3       counsel from BOMA asking some questions about  
4       Financial Accounting Standards 87 in connection with  
5       this pension asset?

6               A     Yes.

7               Q     What is Financial Accounting Standard 87?

8               A     FAS 87 is the accounting standard that  
9       applies to companies that must adhere to GAP publicly  
10      held companies. It applies and describes the  
11      accounting for pension obligations.

12              Q     Did FAS 87 apply to this pension asset as  
13      an accounting matter?

14              A     Yes.

15                      Both Exelon and ComEd are publicly  
16      held FCC registrars and must adhere to GAP. So  
17      ComEd's accounting for the pension obligation is in  
18      accordance with FAS 87. And the financial statements  
19      of both ComEd and Exelon have been audited and  
20      approved by Price Waterhouse Coopers.

21              Q     Now, does the fact that you have a pension  
22      asset meaning that under FAS 87 you are over-funded?

1           A     No.  If you -- you know, if a company is  
2     over-funded, then they will by definition have a  
3     pension asset.

4                     But a pension asset can arise for a  
5     variety of different reasons. One is that funds have  
6     been contributed in excess of the obligation. Another  
7     might be that the trust fund itself that is used to  
8     satisfy the future obligation has generated  
9     better-than-expected asset returns, so the available  
10    funds in the trust fund are greater than the existing  
11    obligation.

12                    In this case, ComEd's trust -- or  
13    ComEd's pension asset is not a reflection of the fact  
14    that it's over-funded.  It's a reflection of the fact  
15    that there are identifiable, but currently  
16    unrecognized, on ComEd's books obligations.  And  
17    those obligations will be recognized at future  
18    periods.

19           Q     Okay.  Given that it's not over-funded, as  
20    you explained, what does it mean to say to several  
21    parties that we're talking about that the pension  
22    obligation was fully funded?

1           A     By fully funded, our view is that the  
2     assets that have -- are currently available as of the  
3     time of the contribution in this case, which was  
4     March of 2005, the assets available were equivalent  
5     to the recognized liability and the unrecognized  
6     liabilities that our actuary has identified.

7           JUDGE HALOULOS:   I'm sorry.

8                     Could you repeat that answer.

9           THE WITNESS:   By saying that we are fully  
10   funded, that means that the asset as of March 31st,  
11   which was the point in time which the \$803 million  
12   contribution was made, the funds that were available  
13   were equivalent to the liability that has been  
14   recognized to date on ComEd's books, and the  
15   unrecognized liabilities that have been measured and  
16   identified by the actuary, but are not yet recorded  
17   on ComEd's books, but we know that they will be at a  
18   future date as they roll through pension expense.

19                     So there is a balance of it two.

20   BY MR. THOMAS:

21           Q     And does it matter for purposes of saying  
22   whether it's fully funded which measure you use; for

1       example, ABO or PPO?

2               A       No.   No.

3                       In this case a particularly for  
4       purposes of the rate base, I think what is relevant  
5       is how the assets available compare to amounts  
6       previously collected from customers to satisfy that  
7       obligation.

8               Q       So does this mean that ComEd's pension  
9       obligation has been eliminated?

10              A       No.   The fact that assets are available to  
11       meet an obligation that exists as of a point in time  
12       doesn't eliminate ComEd's obligation.

13                      The obligation for a given employee's  
14       pension obligation exists until the payment is made  
15       to that employee.

16                      So the obligation will grow over time.  
17       The assets available to meet that will grow over  
18       time.   The two may grow at different paces, but it  
19       doesn't eliminate in any way the legal obligation.  
20       It just means that as of the point in time the assets  
21       and the obligation are unbalanced.

22              Q       And does it eliminate any need for future

1 funding that should happen of the pension obligation?

2 A No. But ComEd will need to continue to --  
3 ComEd's pension obligation will continue to grow over  
4 time and, you know, absent a better-than-expected  
5 stock market performance, for example, ComEd will  
6 need to continue over time to make future  
7 contributions.

8 But this will mitigate -- the fact  
9 that we contributed money when we did mitigates the  
10 amount of future contribution that's will be  
11 required.

12 Q Do you also recall questions by Staff  
13 counsel regarding the treatment of pension assets in  
14 Nicor's last rate case?

15 A Yes.

16 Q Is the pension asset situation involved in  
17 that case comparable to this case?

18 A No.

19 The circumstances that created Nicor's  
20 pension asset were different than the circumstances  
21 that resulted in ComEd's pension asset.

22 And I think it's an important



1 distinction because my reading of the materials in  
2 that case, the testimony and the briefs and the  
3 Commission order were that the Commission disallowed  
4 or did not allow Nicor's pension asset and rate base  
5 because it determined that the asset arose from  
6 ratepayers' supplied funds.

7                   And the way that that happens is that  
8 the contributions -- Nicor was contributing amounts  
9 to its pension fund equivalent to what it was  
10 collecting from its ratepayers for rates.

11                   The stock market performed well in the  
12 latter half of the 1990's and that superior  
13 performance resulted in a better-funded status of the  
14 pension plan than had been expected.

15                   So the assets available at that point  
16 in time were greater than the obligation due to the  
17 returns on the amounts that had been contributed.

18                   And the Commission's, and my  
19 understanding is that the Commission viewed those  
20 superior returns as having been generated by  
21 ratepayer supplied funds, since it was the ratepayer  
22 that supplied the funds that were contributed to the

1 trust fund that resulted in the earnings.

2 In ComEd's case, nobody is suggesting  
3 that ratepayers in this case have supplied the funds  
4 for the \$800 million contribution. And so I think  
5 that the circumstances are quite different in this  
6 case.

7 Q Is the basis of the Commission's order in  
8 the Nicor case reflected in the order in Docket  
9 04-0779 that counsel for Staff showed you yesterday?

10 A Yes. I think that also referred back to  
11 some prior Nicor orders, as well.

12 Q What page of the order is that on?

13 A That's in the Commission analysis and  
14 conclusion on Page 22 and 23 of 04-0779.

15 Q Let's switch to another easy topic,  
16 Goodwill.

17 Do you recall questions by counsel for  
18 IIEC staff and others concerning Goodwill created as  
19 a part of the Unicom-PECO merger?

20 A Yes.

21 Q Do you also recall questions about use of  
22 fair value purchase accounting that created that

1       Goodwill?

2               A       Yes.

3               Q       Okay.  Let's start with fair value purchase  
4       accounting.  What is that?

5               A       Purchase accounting is the standard or the  
6       accounting that must be applied in the event of a  
7       merger, an acquisition, of two companies.

8                       And in 2000 when Unicom, who was then  
9       ComEd's parent, merged with PECO to form Exelon,  
10      Unicom was the acquired company under the defined  
11      accounting standard.

12                      At that time, APP 16 was the GAP  
13      accounting literature that prescribed the accounting  
14      for mergers and acquisitions.  And, specifically, in  
15      the case of this merger prescribed a fair value  
16      purchase accounting must be applied.

17                      And what it means is that all of the  
18      assets and liabilities of the acquired company must  
19      be restated from their historical carrying costs to a  
20      fair value at the time of that merger and recognizing  
21      that the price that the acquiring company paid for  
22      the stock of the acquired company is, in essence, a

1 purchase price for that company.

2 Then the intent of the fair value  
3 accounting is to examine each of the individual  
4 assets and liabilities of the company to reflect the  
5 fair value of those assets from the purchaser's point  
6 of view.

7 Q How is that fair value determined?

8 A In a variety of different ways for  
9 different assets and liabilities. But I think the  
10 most relevant aspect in this case was the fair  
11 valuing of the nuclear -- of the plant assets and  
12 then the fair value of the equity.

13 And the fair value of the equity is  
14 reflected by the -- determined by the value of the  
15 purchase price, you know, the value of the stock that  
16 the then Unicom shareholders received as part of the  
17 merger transaction. So it's a stock-based purchase  
18 value. That determines your equity value.

19 The assets were restated based  
20 on -- the nuclear assets were restated based on an  
21 independent market appraisal based on the value in  
22 the market appraisal for what nuclear plants were

1     worth at that point in time.

2             Q     And were the transmission and distribution  
3     plants also subject to the fair value --

4             A     They were subject to the fair-value process  
5     because the T&D business is a regulated company, the  
6     fair value is determined to be what the company will  
7     receive as recovery of what the value of the T&D  
8     assets are.

9                     And because it's a rate-regulated  
10    company that relies on historical costs, the  
11    historical cost is what will be recovered through  
12    rates. So, therefore, the then carrying value of the  
13    T&D assets was equivalent to the fair value because  
14    that's what would be recovered through rates in the  
15    future.

16                    So, yes, they were subject to the  
17    fair-value process, but there was no change in the  
18    value of those assets.

19                    The nuclear plants, on the other hand,  
20    were not subject to rate-of-return regulation. And  
21    so, therefore, they were subject to an independent  
22    market appraisal.

1           Q     Well, what's the relationship then between  
2     the use of the fair value accounting in the merger  
3     and the creation of Goodwill?

4           A     Well, at the time that the merger  
5     accounting is applied, you go through the process of  
6     restating the equity balance to reflect the purchase  
7     price that's paid.  You restate the value of the  
8     assets based on the market appraisals or the amount  
9     that is recoverable.

10                     And in most cases, there is a  
11     differential that can't be attributable to any  
12     specific asset.  The difference between the purchase  
13     price that's paid and the identifiable physical  
14     assets of the fair value of that identifiable  
15     physical assets of the company.  And that difference  
16     is Goodwill.

17           Q     Do you discuss how this worked out in this  
18     particular --

19           MR. REDDICK:  Could you ask counsel to use the  
20     microphone.

21           MR. THOMAS:  I'll be happy to speak up.

22     BY MR. THOMAS:

1           Q     Do you discuss how the creation of Goodwill  
2     was arrived at as far as numbers go in your  
3     testimony?

4           A     Yes.

5                     That is in my rebuttal testimony.  
6     Largely beginning on Page 26.

7           Q     Could you use this board here and simply go  
8     through the math that is on that page to illustrate  
9     how the Goodwill comes out of the process.

10          A     Sure.

11          Q     Go ahead.

12          A     I guess I'll illustrate it from the  
13     standpoint of what its impact on the equity balance  
14     is.

15                     But, let's say, that as of, you know,  
16     this case 10/20 ComEd's equity balance was  
17     \$6 billion. The effect of writing down the assets on  
18     ComEd's -- ComEd wrote down assets and then also had  
19     to write up some liabilities, which largely is  
20     effecting the tax effect of the write down in the  
21     assets.

22                     So the combination of those two things

1     resulted in a plant write down of 4791 on this side  
2     of the balance sheet.

3             Q     When you say, "plant write down," that's  
4     largely the nuclear assets?

5             A     Right. As we discussed yesterday.

6             MR. REDDICK: Excuse me. You're away from the  
7     microphone.

8             JUDGE DOLAN: There is a wireless mic right  
9     there.

10            THE WITNESS: Is that better?

11            MR. REDDICK: Yes.

12            THE WITNESS: And an increase in liabilities of  
13     2157. So our net reduction in assets liabilities was  
14     26 -- \$2.6 billion. And that's a reduction in  
15     liabilities -- or I'm sorry -- in that asset. And  
16     that's also a reduction in equity. Just through the  
17     way that accounting works to have the balance balance  
18     sheet. If you write down an asset, you write down  
19     equity, as well. It goes through in two places.

20                     And then the purchase price of the  
21     company --

22            MR. REDDICK: Excuse me. Periodically would you



1     step away so I could see.

2             THE WITNESS: I was wondering if it would be  
3     easier for me to write it first.

4             JUDGE DOLAN: Probably.

5             THE WITNESS: Okay.

6                     Just to illustrate starting with the  
7     equity balance as of the moment before the merger is  
8     closed, assume that ComEd's equity balance was  
9     \$6 billion. Go through the process of writing down  
10    all of the net assets of the company and that had the  
11    effect of a \$2.6 billion reduction in the equity  
12    balance of the company.

13                    Purchase price of the company was  
14    \$8.292 billion. So that in order to get from here  
15    less that, that requires an increase in equity of  
16    \$4.926 billion.

17                    And that 4.926 is not identifiable  
18    with any asset on the company's books, so that is  
19    what is recorded as Goodwill.

20                    So the company records \$4.926 billion  
21    in Goodwill. But at the end of that day in which the  
22    purchase accounting is applied, the net increase in

1 the equity balance is only \$2.29 billion higher than  
2 it was at the beginning of the day.

3 So I think the point of the exercise  
4 is to illustrate that the amount of the Goodwill  
5 that's recorded is not equivalent to what the change  
6 in the common equity balance is at the -- as a result  
7 of the application of purchase accounting. There are  
8 multiple items that effect the equity balance.

9 And what ComEd has proposed in this  
10 proceeding was to reestablish the equity balance  
11 to -- on a basis that would be consistent with what  
12 it was prior to recording the purchase accounting.

13 But equity did not increase by  
14 \$4.9 billion by the amount of the Goodwill. It  
15 increased by 2.29 billion, which is the difference  
16 between the beginning point and the end point.

17 JUDGE DOLAN: What does that say right after the  
18 600? What is above balance? The 6 billion?

19 THE WITNESS: Oh, beginning balance. That's  
20 just the starting point.

21 So if you assume that the merger  
22 closed in one day, which it does. It's essentially

1 a-point-in-time transaction. If the merger occurred  
2 at noon, this was the 11:00 balance and this is the  
3 12:01 balance.

4 JUDGE DOLAN: Okay.

5 BY MR. THOMAS:

6 Q Should we have this marked as ComEd  
7 Redirect Exhibit 1? Excuse me. ComEd Redirect  
8 Exhibit 2. Pardon me.

9 MR. REDDICK: Are you going to produce an  
10 8 1/2 by 11?

11 MR. THOMAS: We will try to take this and  
12 process.

13 MS. POLEK-O'BRIEN: Yes.

14 MR. RATNASWAMY: We have ComEd Cross-Exhibit 1  
15 from yesterday, but I don't see it.

16 MR. THOMAS: As a point of order, are we  
17 separately numbering redirect from cross-exhibits or  
18 are we simply going consecutively?

19 JUDGE DOLAN: Why don't we mark it as a  
20 Redirect 1 just so it's not confused with any exhibit  
21 that's already in her direct testimony.

22 And you are offering that for

1 admission?

2 MR. THOMAS: We will be offering it for  
3 admission. I can do so now, if you choose.

4 JUDGE DOLAN: Why don't we do that before we  
5 move on.

6 MR. THOMAS: We will move for admission into  
7 evidence ComEd Redirect Exhibit 1.

8 MR. REDDICK: One small point on that. It  
9 occurs to me during recross Ms. Houtsma might add  
10 something to the exhibit, so maybe we can delay that.

11 JUDGE DOLAN: We'll hold off then.

12 That's fine.

13 MR. THOMAS: That's fine.

14 BY MR. THOMAS:

15 Q Ms. Houtsma, now that you explained how  
16 Goodwill is created in the merger transaction.

17 Is there a relationship between the  
18 fair value purchase accounting and its effect on the  
19 assets of the company at the time of this merger and  
20 the cost at which the nuclear assets were transferred  
21 to the affiliate Exelon Generation?

22 A The transfer of the assets to the Exelon

1     Generation was a separate transaction that occurred  
2     several months after the merger. But the accounting  
3     requirements are that the assets need to be  
4     transferred. In the event of a transfer of assets to  
5     an affiliate, that transfer needs to occur at its  
6     fair value.

7                     So at that point in time, the fair  
8     value, because that occurred roughly two-and-a-half  
9     months after this transaction, the fair value was  
10    equivalent to the written down new book value that  
11    came about as a result of this process.

12            Q     And that value is what?

13            A     Well, the net effect of all of the assets  
14    and liabilities that were transferred was about  
15    \$1.3 billion.

16                     That was the transfer of the assets,  
17    the transfer the accumulated depreciation associated  
18    with those assets, the transferring of the  
19    decommissioning liabilities associated with the  
20    assets, the tax obligations associated with the  
21    assets. The net of that was \$1.3 billion. And it  
22    was lower by than it would have been absent the

1     \$2.6 billion write-down.

2           Q     And that write-down had occurred  
3     previously?

4           A     At the time of the merger, yes.

5           Q     Do you also recall being asked questions by  
6     CUB counsel regarding what he called the  
7     consideration for the transfer of the nuclear units?

8           A     Yes.

9           Q     What did ComEd receive as part of that  
10    transfer transaction?

11          A     ComEd received its own treasury stock back  
12    from the parent, and also a liability; that was  
13    offset by a liability related to some accounts  
14    payable of the transfer.

15          Q     And did the receipt of treasury stock have  
16    any impact on this case?

17          A     The receipt of the treasury stock had the  
18    effect of reducing the equity balance in this case.

19                    So there was a roughly \$1.3 billion in  
20    equity, and that carries forward as a reduction in  
21    equity in this case.

22                    So equity is lower than it otherwise

1     would have been in this case, and that has the effect  
2     of lowering the required rate of return in this case.

3           Q     If ComEd had received cash instead of  
4     treasury stock, what would have been the effect on  
5     this rate proceeding?

6           A     You know, if, hypothetically, ComEd were to  
7     have received \$1.3 billion in cash rather than  
8     treasury stock, there wouldn't have been a  
9     corresponding reduction in equity. So equity would  
10    have been \$1.3 billion higher, all else being equal,  
11    than it is in this case. We would not have seen that  
12    corresponding reduction in the rate of return.

13          Q     Was the \$1 billion note receiveable a part  
14    of the transaction?

15          A     Yes.

16                   The note receiveable from Exelon was  
17    recorded and entered into, you know, at the same time  
18    as the transfer of the assets.

19                   So the decision to enter into that  
20    note receivable by the parent was very much part and  
21    parcel of the overall asset transfer transaction.

22           MR. THOMAS: I have no further questions.

1                   A point of order, however, I'm  
2   reminded that this is our redirect exhibit.

3                   So if it turns out that counsel in  
4   doing re-cross wants some changes to it, that will  
5   create a new exhibit that will be their re-cross  
6   exhibit, so that this exhibit should go in as it is.

7           JUDGE DOLAN: That's fine.

8                   Is there any objection to that  
9   counsel?

10          MR. REDDICK: No objection.

11          JUDGE DOLAN: Okay.

12                               (Whereupon, Commonwealth Edison  
13                               Re-Direct Exhibit No. 1 was  
14                               admitted into evidence.)

15          JUDGE DOLAN: Who wants to start on recross?

16                               RE-CROSS EXAMINATION

17                               BY

18                               MR. NEILAN:

19          Q     Good morning, Ms. Houtsma.

20          A     Good morning.

21          Q     Paul NEILAN. As you recall from yesterday  
22   when we discussed pension assets and liabilities.



1                   Ms. Houtsma, during redirect, counsel  
2   asked you a question regarding product of accounting  
3   is that correct, the term "product of accounting"?

4           A     He asked me if the pension asset was merely  
5   a product of accounting.

6           Q     When you use the term, "product of  
7   accounting," what do you mean by that?

8           A     I mean that it did not simply arise because  
9   of accounting entries. It arose because of a cash  
10  contribution of \$803 million.

11                   So it wasn't, as some of the witnesses  
12  have implied, simply the result of some journal  
13  entries that occurred between companies. There was a  
14  cash transaction as reflected in ComEd's books.

15          Q     And did I understand correctly on redirect  
16  that your position was that the \$803 million pension  
17  contribution did not eliminate ComEd's pension  
18  obligation, is that a correct understanding of your  
19  statement?

20          A     That's correct. The fact that funding is  
21  equivalent to the obligation does not eliminate the  
22  obligation.

1           Q     And do I understand your position correctly  
2     to be that the reason this obligation still exists is  
3     because part of the pension liability is recognized,  
4     but part of the pension liability is not recognized?

5           A     I think we're talking about two different  
6     things here.  When I'm saying, it's not eliminated, I  
7     mean it doesn't go away.  You know, even if the  
8     liability is recognized on ComEd's books and the  
9     liability -- for accounting purposes, the liability  
10    and the asset are unbalanced, that doesn't mean that  
11    ComEd's got no future obligation to provide a pension  
12    obligation; a legal obligation to its employees  
13    exists and it will change over time.

14                    So even though the assets may be  
15    unbalanced today; tomorrow, they might not be.

16                    So the legal obligation to its  
17    employees is not eliminated simply because their  
18    assets are equivalent to the obligation.

19           Q     Do I understand you correctly to say then  
20    that as of a certain day, they would be unbalanced?

21           A     Yes.

22           Q     So if we took a day, let's say, what was

1 the date, March 31 of 2005, was that the date on  
2 which the \$803 million capital contribution was made?

3 A Yes.

4 Q On March 31, 2005 then, that was unbalanced  
5 and there was no pension obligation?

6 A No.

7 I'm saying that they're unbalanced.

8 That doesn't mean that there is no obligation. The  
9 fact that as of that point in time the measured  
10 accounting obligation is equivalent to the trust fund  
11 assets. So the amounts are the same. That doesn't  
12 mean that the obligation went away. It means your  
13 assets -- your funds and your obligation are the  
14 same.

15 Q And yet I'm not clear on something because  
16 yesterday, did we not agree that the pension plan was  
17 fully funded as of that date?

18 A Yes. And I still say it's fully funded,  
19 but that doesn't mean that ComEd could walk away from  
20 its pension plan as of that date, and say, I have no  
21 further obligation because, you know, it's just a  
22 measurement as of that point in time.

1           Q     My question did not involve asking you  
2     whether ComEd intended to abandon either its plan or  
3     employees under its obligations under the plan.

4                     Was the plan fully funded as of  
5     March 31, 2005?

6           A     Yes.

7           Q     So pension assets then eliminated the  
8     pension obligation as of that date?

9           A     No.

10          Q     It did not?

11          A     It did not eliminate it. The obligation  
12     exists.

13          Q     And if I understand correctly the reason it  
14     did not eliminate it is because ComEd and Exelon  
15     choose to recognize or not recognize pension  
16     liabilities from one corporate level or another; is  
17     that what you are saying?

18          MR. THOMAS: Excuse me. That mischaracterizes  
19     the witness' testimony.

20                     Rephrase the question.

21          JUDGE DOLAN: Why don't you rephrase it.

22     BY MR. NEILAN:

1           Q     Is the reason that you believe that the  
2     pension obligation still exists is because ComEd has  
3     not recognized certain liabilities but Exelon has?

4           A     No.

5           Q     Okay. Perhaps you could explain your answer  
6     so I could understand it.

7           A     Again, I guess separating accounting from  
8     obligation, you know, I don't -- the fact that on  
9     Exelon's financial statements, the pension asset was  
10    equivalent to the toe -- or the pension funds were  
11    equivalent to the totality of the recognized  
12    obligations.

13                     That doesn't mean that Exelon doesn't  
14    have a pension obligation, that its pension  
15    obligations don't exist. They continue. They live  
16    on. They exist. They're just not showing a, for  
17    accounting purposes, we have a showing of that that  
18    things are in balance.

19           Q     I'm a bit confused. Do you mean ComEd or do  
20    you mean Exelon?

21           A     Actually, I'm explaining Exelon.

22                     So at Exelon that's the situation;

1     there is a perfect balance. But that doesn't mean  
2     that Exelon has no obligation. It just means that  
3     you've got to balance them, and when you compare the  
4     two they're equivalent to each other.

5                     At ComEd, ComEd's contributed funds  
6     are greater than the liability that's been recognized  
7     to date on its books. Even if that portion of the  
8     liability that was recorded up at Exelon would have  
9     been recorded at ComEd, it has not been recovered  
10    through customer rates. So customers have not met  
11    that -- provided any funds to satisfy that  
12    obligation.

13                    So that's why for purposes of rate  
14    base, the pension asset represents funds that have  
15    been contributed to satisfy future obligation that  
16    have not been provided by customers.

17                    So ComEd can still have, you know,  
18    there is a situation, hypothetically, that ComEd  
19    could have, you know, be in balance for accounting  
20    purposes, but not for ratemaking purposes. It depends  
21    how much -- has the customer provided the funds to  
22    satisfy the obligation. And that's what we look at

1 to determine how an asset should be reflected for  
2 rate setting purposes.

3 Q What does ComEd have to do to recognize a  
4 liability like that?

5 A It will be recognized over time as  
6 pension -- there are these unrecognized gains and  
7 losses that under FAS 87 are recognized in pension  
8 expense over a longer period of time.

9 So ComEd will recognize pension  
10 expense in future years that reflect those  
11 unrecognized -- that incorporate the effect of those  
12 losses.

13 So ComEd will recognize pension  
14 expense. And in future years, that pension expense  
15 will in theory be reflected in customer rates, and at  
16 that point in time the customer will provide recovery  
17 of the liability.

18 Q I'm just wondering if we're talking about  
19 two different things.

20 You are referring to pension expense.  
21 And I guess the question that I was really driving at  
22 was pension obligation.

1                   And I believe yesterday when we talked  
2   about pension obligation, I believe we agreed that if  
3   a company has an unfunded pension obligation, that's  
4   a company that has a liability?

5           A     Right.

6           Q     A liability is different from an expense;  
7   would you agree?

8           A     They are different, but they're recorded  
9   simultaneously.

10                   So on a two-sided entry, the entry is  
11   ComEd recognizes a debit to pension expense and a  
12   credit to a liability.

13                   So from an accounting standpoint,  
14   that's how the liability becomes recognized on  
15   ComEd's books through the --

16           Q     If we look back to March 31, 2005, that  
17   pension obligation would be a liability, and you are  
18   saying it's balanced by that \$803 million  
19   contribution as an asset, so that's really a  
20   balance-sheet item?

21           A     It is not yet on ComEd's balance sheet.

22                   But its an actuarial. We know from



1 the actuaries that the unrecognized losses have  
2 occurred.

3 Q Right.

4 I just don't want to confuse apples  
5 and oranges here. Because it just seems to me that  
6 the pension obligation is a liability, but the  
7 pension expense -- do I understand correctly, that  
8 the pension expense would be for a particular period  
9 of 2003 to '04, '05?

10 A Absolutely.

11 Q Okay. So is the pension expense, do I  
12 understand correctly, that that would be something  
13 that would show up on ComEd's income statement?

14 A It will show up on ComEd's income statement  
15 and also have an impact on the balance sheet.

16 Q Right. Because your closure will come, say  
17 to your statement, at the end of the period to your  
18 balance sheet; is that correct?

19 A Well, because we have two-sided entry, when  
20 you recognize the pension expense, you will  
21 simultaneously recognize the pension liability. So  
22 they happen at the same time.

1           Q     Right. Your pension expense would increase  
2     if you had a net pension expense of, let's say, \$100,  
3     that will increase your pension obligation liability  
4     account by \$100? Do I understand correctly?

5           A     Correct.

6           Q     So going back to this recognition of  
7     liability because I want to understand completely, we  
8     are talking about pension expense, that's one thing,  
9     that's the periodic expense.

10                     But we are also referring, are we not,  
11     to recognition of this liability and whether that's  
12     recognized on ComEd's books and/or whether it's  
13     recognized on Exelon's books as a liability?

14           A     (Shaking head up and down.)

15           Q     Okay. And do I understand correctly that  
16     your position is that the reason that ComEd does not  
17     have this pension obligation is because they do not  
18     recognize this pension liability on the ComEd books,  
19     but that liability is recognized on the Exelon books?

20           A     That's correct to date as of that.

21           Q     To date?

22           A     Just to clarify. They will.

1 Q As of a particular date?

2 A Yes.

3 Q So let me go back to the question that I  
4 asked earlier because in terms of recognizing this  
5 liability, and this is where I think we kind of  
6 diverged in discussing pension expense versus pension  
7 liability.

8 If you were to come in on a given day  
9 and someone said "We need to recognize this  
10 liability." What would you do? What would you have  
11 to do? How would ComEd recognize?

12 MR. THOMAS: Could you clarify for the record  
13 which liability?

14 MR. NEILAN: Sure. Pension obligation. Let's  
15 be clear.

16 BY MR. NEILAN:

17 Q You are saying that ComEd has this pension  
18 asset on its books, and it's not offset by a pension  
19 liability. And the pension liability is -- the  
20 reason for that is because it's not recognized on  
21 ComEd's books because the liability is upstairs on  
22 Exelon's books; is that correct?

1           A     That's correct.

2           Q     Have I gotten my small brain around that?

3           A     (Shaking head up and down.)

4           Q     Okay. How would ComEd go about  
5 recognizing?

6           A     And that's where I need to go back --  
7 that's why I brought up the way ComEd will recognize  
8 it is through future recognition of pension expense  
9 and creation of a liability.

10                     So, you know, I wasn't trying to  
11 diverge. I was trying to be responsive to the  
12 question because that is, in fact, how it will be  
13 recognized on ComEd's books.

14           Q     Okay. Yet, that liability is recognized on  
15 Exelon's books and Exelon already has that liability.  
16 Do I understand correctly that they are not waiting  
17 for future periods of pension expense?

18           A     It has been recognized on Exelon's books.

19           Q     It has. Okay. That's where I'm going to.

20                     So that liability -- this is a bit  
21 complex. I just want to make sure I follow what  
22 you're saying.

1                   That liability, it's not that the  
2    liability is not recognized on ComEd's books, and  
3    your position is that ComEd will recognize more of  
4    that liability in future periods --

5           A     (Shaking head up and down.)

6           Q     -- as a pension expense; is that correct?

7           A     That's correct.

8           Q     Yet, ComEd on its books has that full  
9    liability in recognition of that obligation to  
10   pension beneficiaries, whatever those may be,  
11   whatever that obligation is?

12          A     I'm sorry. Could you repeat that.

13          Q     Okay. Let's go back over it again.

14                   Your position is that ComEd has an  
15   \$803 million pension asset on its books, correct?

16          A     Correct.

17          Q     You also say that the reason there is an  
18   \$803 million pension asset on ComEd's books is  
19   because ComEd has not recognized an offsetting  
20   pension obligation as a liability; is that correct?

21          A     That's correct.

22          Q     Yet, at the same moment on the same day,

1     let's say, March 31 or whatever balance sheet,  
2     whatever day you want to close your balance sheet on,  
3     Exelon, in fact, has recognized full amount of that  
4     pension obligation as a liability; is that correct?

5           A     That's correct.

6           Q     Okay. So my question would be: Exelon has  
7     that liability on it, yet that liability is somehow  
8     attributable to ComEd's employees in the future; is  
9     that right?

10          A     Right.

11          Q     And ComEd will recognize that liability, do  
12     I understand correctly, in periodic chunks as time  
13     goes by?

14          A     That's correct.

15          Q     Is there a prohibition on ComEd recognizing  
16     that liability as of, let's say, March 31, 2005?

17          MR. THOMAS: Just so the record is clear, are  
18     you talking about a legal prohibition, accounting  
19     prohibition?

20          MR. NEILAN: Accounting.

21     BY MR. NEILAN:

22          Q     In other words, if you were to prepare

1 financial statements for ComEd fairly presented in  
2 accordance with GAP, if you put that pension  
3 liability on, if you showed that in a presentation of  
4 ComEd's financial statements as of, let's say,  
5 March 31, '05, would you be unable to show that  
6 pension liability on ComEd's books as not consistent  
7 with GAP?

8 In other words, would you be able --  
9 if you showed the pension liability on ComEd's books  
10 and you had to issue -- would you be able to give a  
11 GAP opinion on that?

12 A Well, I guess it would depend on -- it's  
13 hard to respond to a hypothetical question like that.

14 ComEd's financial statements are  
15 prepared in accordance with GAP. And reflect the  
16 fact that ComEd is a participant in Exelon-sponsored  
17 pension plan, and it reflects the manner in which  
18 Exelon passes the costs on to its affiliates.

19 Is the way that we do it the only way  
20 that it could be done? No, it's been based on Exelon  
21 inner-company policies and practices.

22 Q So consistent with GAP, you could show on

1 ComEd's books this pension obligation as a liability?  
2 And, of course, that has some kind of offsetting  
3 entries on Exelon's books?

4 A Well, it would still, if it -- I guess, I  
5 would say two things.

6 If it were on ComEd's books, first of  
7 all, as I said in my testimony, it would not be  
8 deducted -- appropriate to deduct it from rate base.

9 Q That's not my question.

10 MR. THOMAS: Excuse me. Let's let the witness  
11 answer. I think we established the witnesses should  
12 be able to answer the question. And if you want to  
13 re-focus it, that's fine.

14 THE WITNESS: It would not be deducted from  
15 ComEd's rate base in any event. And that's been in  
16 my surrebuttal and my rebuttal testimony.

17 Just because it's not been supplied  
18 by -- it's not a liability that has been supplied by  
19 ratepayers, so there would be no basis for that  
20 deduction.

21 BY MR. NEILAN:

22 Q My question really relates to accounting.



1                   And it doesn't relate to the desired  
2   treatment of the pension asset as far as a rate base  
3   asset, at least not yet.

4                   My question is: That liability could  
5   be shown on ComEd's books consistent with GAP  
6   assuming there were some sort of offsetting entries  
7   on Exelon's books, because as we mentioned earlier --

8           A     That would be eliminated when it's rolled  
9   up, right.

10          Q     The day before it shows up on Exelon's  
11   books and the day we recognize that on ComEd's books,  
12   somehow it has to come off Exelon's books? Would  
13   that be a fair statement?

14          A     That's fair except that when Exelon  
15   consolidates, it would get back to the same place.

16          Q     Right. And I guess that relates to this  
17   case because ComEd is the party in this case, but  
18   Exelon is not. So we're looking at ComEd's books in  
19   this case?

20          A     Correct.

21          Q     So, again, I just want to make sure, what  
22   would ComEd have to do to recognize that pension

1 obligation liability?

2 A I guess, I'm not understanding the  
3 question.

4 Q Okay. ComEd doesn't recognize the pension  
5 obligation as a liability today.

6 If tomorrow they chose to do so, what  
7 would they have to do?

8 A From an accounting standpoint?

9 Q Yes.

10 A Well, I'm speculating, which I don't like  
11 to do, but the way the entry was -- that the  
12 liability was recognized at Exelon was through other  
13 comprehensive income. And so I believe if it was  
14 recorded at ComEd, it would be a similar type entry  
15 for comprehensive income.

16 Q So do I understand correctly that there  
17 would be some accounting entries at both ComEd and  
18 Exelon whereby ComEd would recognize that pension  
19 obligation liability, and somehow there would be some  
20 kind of entry at Exelon taken off Exelon's books; is  
21 that right?

22 A Yes. You wouldn't have it in both places.

1           Q     And if I understand correctly, you could do  
2     that consistent with GAP?

3           A     I guess. I'm not sure. I know of no  
4     reason why you couldn't. But it's a hypothetical  
5     question, so I can't definitively state that we  
6     could.

7           Q     So then do I understand correctly that  
8     ComEd's choice not to recognize this pension  
9     obligation as a liability on its books really is just  
10    as much a product of accounting as what you claim  
11    Ms. Ebrey's view is?

12                         Basically, it's a choice that ComEd  
13    has made not to recognize the liability on its books.  
14    You say -- you take her view as a product of  
15    accounting, yet yours is not?

16           A     It was not ComEd's choice to not recognize  
17    it. It's -- Exelon, again, is the plan sponsor. And  
18    Exelon, you know, owns the pension plan and the  
19    accounting for it. So it's consistent with the  
20    policy Exelon has used to recognize pension expense.

21                         Exelon's policy has been for the  
22    subsidiaries and affiliates that participate in that

1     plan to recognize pension liability as it recognizes  
2     pension expense. That was not a ComEd decision.

3           Q     Has ComEd asked Exelon to change that  
4     policy choice?

5           A     No.

6           Q     Have they asked any questions of ComEd  
7     about that policy choice?

8           MR. THOMAS: Excuse me. Would you repeat the  
9     question.

10    BY MR. NEILAN:

11           Q     The choice of recording liability of Exelon  
12     versus the recording liability of ComEd?

13                   If I understand the witness correctly,  
14     that's a choice that Exelon makes as a plan sponsor,  
15     is that right, and no one at ComEd has questioned  
16     that at Exelon?

17           MR. THOMAS: I object to the question as  
18     over-broad.

19           MR. NEILAN: I don't think it's over-broad. It  
20     goes directly to their line of questioning.

21           MR. THOMAS: You asked whether anyone at ComEd.  
22     This witness can hardly testify as to what anyone at

1 ComEd did.

2 JUDGE DOLAN: I think I agree it's broad. If you  
3 want to try to make it more specific.

4 BY MR. NEILAN:

5 Q I understand correctly that it's Exelon's  
6 policy -- you understand Exelon's policy as plan  
7 sponsor to record the liability in the Exelon parent  
8 level, correct?

9 A Yes.

10 Q Has ComEd ever questioned that policy?

11 A Well, certainly I can say that I, as a  
12 ComEd employee, have had conversations, and asked  
13 questions about it in order to understand it, you  
14 know, to determine the appropriate rate, for example.  
15 So I asked questions in that respect.

16 Q Okay.

17 MR. NEILAN: I have no further questions, your  
18 Honor.

19 JUDGE DOLAN: Mr. Reddick?

20

21

22

1                   RECROSS EXAMINATION

2                   BY

3                   MR. REDDICK:

4           Q     Good morning, Ms. Houtsma.

5                   You have given us a very enlightening  
6     description of how purchase accounting works.

7                   I'd like to re-focus my questions,  
8     though, on, not the mechanics of purchase accounting,  
9     but on what happened to ComEd's distribution assets  
10    after that structure while all of this was going on.

11                  And I would like to try to clarify and  
12    understand with a short series of what I intend to be  
13    yes-or-no questions, so if you want answer yes or no,  
14    let me know.

15           A     I will raise my hand.

16                  MR. THOMAS:  Conrad, just so we understand, I  
17    think the process has been established for all  
18    witnesses that they may have to give a yes or no, but  
19    then they can go on to explain.  I assume that's what  
20    you --

21                  MR. REDDICK:  That's fine.  If you can't answer  
22    it yes or no, let me know.  Is that okay?

1 JUDGE DOLAN: And make sure you stay to the  
2 microphone too, so we are not staining the court  
3 reporter.

4 BY MR. REDDICK:

5 Q I believe you said yesterday that the  
6 merger accounting recorded a re-valuation of ComEd's  
7 assets, meaning a substantial part. I think that's  
8 your word, of the word "valuation" was related to  
9 ComEd's generating assets; is that correct?

10 A That's correct.

11 Q So looking at ComEd Redirect Exhibit No. 1,  
12 that 4.791 billion plan asset write-down included the  
13 write-down of ComEd's nuclear assets that was  
14 quantified in the FCC filing of 4.7 billion?

15 A Yes. I think we established yesterday that  
16 it was, that the 4.791 is, essentially, all nuclear  
17 plant.

18 Q Okay. And when the merger accounting  
19 reported Goodwill, the amount recorded was the excess  
20 of the purchase price over the book value of the  
21 assets and liabilities after the re-valuation. Let me  
22 rephrase it.

1                   When the merger request accounting  
2   sought to account for the excess of the purchase  
3   price over the fair value of the assets, the fair  
4   value in question was the value after the  
5   re-valuation?

6           A     Yes, that's correct.

7           Q     And when the Goodwill was accounted,  
8   putting aside I'm not trying to calculate the  
9   numbers, but when the Goodwill was accounted, the  
10  affected accounts were Goodwill and common equity?

11          A     Well, that's what I showed up here on, I  
12  guess, Redirect Exhibit 1.

13          Q     Yes. The answer is yes?

14          A     Yes.

15

16                               (Whereupon, there was  
17                               a change of reporters.)

18

19

20

21

22



1 BY MR. REDDICK:

2 Q And if I understand the mathematics on  
3 ComEd Redirect Exhibit 1, the amount of Goodwill  
4 actually recorded was affected by the \$4.791 billion  
5 writedown?

6 A That's correct. The amount of the Goodwill  
7 is higher as a result of that writedown. If there  
8 would have been no fair value writedown, the equity  
9 still would have gone up by 2.292 billion in either  
10 event. The impact on equity is the difference  
11 between the purchase price and the original book  
12 value.

13 But the fact that there was a fair  
14 value writedown increased the amount of the Goodwill.  
15 It did not increase the amount of the over -- of the  
16 overall effect on equity.

17 Do you want me to -- maybe I can  
18 explain.

19 Q No. Let me think about it for a moment.

20 A I think just based on -- to illustrate  
21 based on this exhibit --

22 Q Hold it just a minute.

1           A     The purchase price of the company --

2           Q     Please, let me just look at it for a  
3     second.

4           A     Oh, I'm sorry.

5           MR. THOMAS:   Is that better, Conrad?

6     BY MR. REDDICK:

7           Q     Okay.   Looking at ComEd Redirect Exhibit  
8     No. 1, the amount by which the common equity changed  
9     is which figure?

10          A     It would be the difference between the  
11     ending point of 8.292 billion and the beginning  
12     balance of 6 billion.   So I didn't write it up there,  
13     but it would be \$2.292 billion.

14                     And I probably need to clarify  
15     something on the exhibit.   That might help to  
16     illustrate it.

17          Q     Well, not -- don't do it on my account  
18     because I don't want to change your exhibit.

19          A     Well, I just -- the purchase price of the  
20     company was 8.292 billion.

21          Q     I'm not sure what's happening to the  
22     exhibit, though.

1           A     Oh.

2           MR. THOMAS:   Yeah.

3           THE WITNESS:   Should I scratch that out?

4           MR. THOMAS:   Yeah, scratch that out.   And if

5   we'll all agree by convention, the scratched out is

6   the original exhibit.

7           THE WITNESS:   The purchase price of the company

8   is the \$8.292 billion.   And that's the purchase price

9   regardless of whether there are any fair value

10   writedowns or not.   So whether you have fair value

11   writedowns or not, the increase in equity resulting

12   from the transaction is 2.292 billion, the difference

13   between the 8.292 and the 6.

14                    If you have fair value writedowns,

15   that's going to increase the Goodwill, you know.   And

16   that -- if you hadn't had fair value writedowns, let

17   me put it that way, the Goodwill would have been

18   2.292 billion.   Because we had fair value writedowns,

19   the Goodwill was 4.926 billion, but the increase in

20   equity is 2.292 in either event.

21   BY MR. REDDICK:

22           Q     Okay.   The screen went dark on me.

1                   And when the -- the separate  
2     transaction that you discussed, the transfer of the  
3     nuclear plant, when the plants were transferred to  
4     Exelon Generation, that transaction had no effect on  
5     the distribution plant of ComEd?

6           A     Right. There was no distribution plant  
7     that was transferred. The only caveat I would add is  
8     the one we talked about yesterday. We said some  
9     general intangible plant was transferred that is --  
10    you know, some general plant is used to support  
11    distribution assets.

12                   But none of what was transferred was  
13    general plant that's used to support distribution  
14    assets.

15           MR. REDDICK: Thank you. That's all the  
16    questions I have.

17           MR. FOSCO: I do have some questions.

18           JUDGE DOLAN: All right, Mr. Fosco.

19                   CROSS EXAMINATION

20                   BY

21                   MR. FOSCO:

22           Q     Good morning, Ms. Houtsma.

1           A     Good morning.

2           Q     Let me first address the redirect you had  
3     on the pension asset.

4                     If ComEd had booked the pension  
5     liability on its books, what would have been the  
6     effect on its common equity?

7           A     Well, other comprehensive income reduces  
8     common equity.

9           Q     So it would have reduced it then is the  
10    answer?

11          A     Yes.

12          Q     Okay.  When you answered Mr. Thomas'  
13    question about what the pension asset is, you stated  
14    that it's a contribution above what has been  
15    collected through rates and ratepayers; correct?

16          A     Correct.

17          Q     So is it your position that no matter --  
18    let me rephrase that.

19                     Is it your position that a pension  
20    asset exists regardless of whether the liability is  
21    booked on ComEd's books --

22          A     For --

1           Q     -- in this case?

2           A     For rate purposes.  What I've said is even  
3     if the liability was recorded on ComEd's books, that  
4     liability has not been created through the use of  
5     shareholder -- of ratepayer supply funds, customer  
6     supply funds.  So I don't believe it would be  
7     appropriate to include it as a rate-based deduction.

8           Q     Okay.

9           A     Not all liabilities recorded on ComEd's  
10    books automatically become a rate-based deduction.  
11    They're only a rate-based deduction if they've been  
12    created through shareholder -- or, sorry, customer  
13    supply funds.  You give the customer the benefit of  
14    that.

15          Q     So is your opinion in that regard based on  
16    accounting concepts or ratemaking concepts?

17          A     Ratemaking.

18          Q     Okay.  And it's your understanding --  
19    because you described the Nicor order -- that the  
20    Commission does not allow a pension asset from an  
21    overfunded situation where the overfunding results  
22    from ratepayer funds; correct?

1           A     They -- yes, the pension asset in the Nicor  
2 cases arose because of customer supplied funds. So  
3 customers supplied the funds that led to the pension  
4 asset. So, therefore, it was not deducted, allowed  
5 in rate base.

6           Q     Just so I clearly understand, in your  
7 understanding of ratemaking concepts, if there is an  
8 overfunded pension plan, if the overfunding resulted  
9 from -- I think you just said this -- from  
10 ratepayer -- what is deemed or actually ratepayer  
11 funds, then the utility does not recover that in its  
12 rate base; correct?

13          A     Right. I mean, the purpose of including an  
14 asset in rate base is to allow the shareholders and  
15 bond holders of the company who have financed that  
16 asset to recover the costs of it. If the asset was  
17 not provided for using shareholder or bond holder  
18 provided funds, you don't have a basis to include it  
19 in rate base.

20          Q     Okay. And then the second concept is that  
21 if the utility provides the funds, regardless of  
22 whether it exceeds its pension obligations, booked or

1 otherwise, it's still entitled to recover a return on  
2 that amount?

3 MR. THOMAS: Excuse me, Carmen. I just -- I  
4 don't understand the question because you're talking  
5 about utility supplying the funds. And the testimony  
6 was about shareholders supplying the funds. So can  
7 you clarify what you're addressing?

8 MR. FOSCO: I'm happy to accept that  
9 clarification.

10 THE WITNESS: It is not -- I'm not trying to  
11 imply that it's a given just because a utility has  
12 spent money. It has to be shown to be just and  
13 reasonable. And I think Mr. Mitchell has talked  
14 about in his testimony why the decision to fund the  
15 pension plan when we did is -- was the appropriate  
16 thing to do.

17 You know, that pension fund had been  
18 underfunded. It also had the benefit, as I mentioned  
19 yesterday, of reducing pension expenses, reducing the  
20 future pension expense by \$30 million. And that's  
21 been reflected in this case.

22 BY MR. FOSCO:



1           Q     And you haven't cited in your testimony any  
2     prior Commission orders where it recognized a pension  
3     asset where there was not an overfunded situation --  
4     strike that.

5                     You have not cited any Commission  
6     cases in your testimony, have you, where the  
7     Commission recognized a pension asset simply because  
8     shareholders have provided the funds and there was no  
9     overfunding?

10           MR. THOMAS:   Can I object just on the grounds  
11     -- you're close.   But we've talked about fully funded  
12     and now you're using the word overfunded.   Now, I  
13     just want to make sure the record is clear.   I don't  
14     think we've agreed anything is overfunded.

15           MR. FOSCO:   Well, I think you specifically  
16     yourself used the word overfunded.   The witness has.  
17     It was in a redirect.   I have quotes.   Those are your  
18     words, not mine.

19           MR. THOMAS:   Yes.   No, I asked whether, in  
20     fact, it was overfunded.   The answer to which was no.  
21     So if the -- the premise of your question seems to be  
22     incorrect.   Three-fourths of what you said is fine.

1 I just don't think the characterization of overfunded  
2 is what the witness has said is a proper  
3 characterization of that asset.

4

5 BY MR. FOSCO:

6 Q It's your testimony that the pension trust  
7 is not overfunded; correct?

8 A Right.

9 Q Even though -- okay.

10 Has the Commission -- you haven't  
11 cited to any orders where the Commission has  
12 recognized any pension trust where the pension trust  
13 was not overfunded; isn't that correct?

14 A I guess what I would say is my answer is,  
15 you know, yes, I -- no, I have not cited any orders.  
16 I'm not aware of any, but I need to explain.

17 I'm not aware of any similar  
18 circumstance where a pension asset has arisen because  
19 of contributions, specifically because of  
20 contributions as opposed to superior earnings on the  
21 trust fund.

22 Q That's the point of my question. This is a

1 case of first impression, isn't it?

2 A I'm not aware of a similar situation.

3 Q Thank you. Okay.

4 Let's -- my second -- that's it for  
5 that issue.

6 My second group of questions now go to  
7 the very nice redirect cross exhibit -- or redirect  
8 exhibit.

9 The -- just so I'm clear, the \$6  
10 billion number is the beginning balance of common  
11 equity, is that correct, in your exhibit?

12 A Yes, that's for purposes of this  
13 illustration. It's intended to represent ComEd's  
14 equity balance, you know, at the moment before the  
15 merger occurred.

16 Q It's hypothetical? I mean, that's just a  
17 number for illustration purposes?

18 A It's for illustration purposes. It's not  
19 the actual value.

20 Q Thank you. Okay. And at the time of the  
21 merger, ComEd had a certain amount of assets that  
22 were utilized in providing service to ratepayers; is

1       that correct?

2               A       Yes.

3               Q       Okay.  And in addition to common equity,  
4       ComEd had a certain amount of debt that also  
5       supported its investment in those assets; is that  
6       correct?

7               A       That supported which assets?

8               Q       The assets used to provide service to  
9       ratepayers, both generation and T&D?

10              A       Yes.

11              Q       Okay.  If we assume that the total amount  
12       of assets supporting service, hypothetically, is  
13       \$10 billion, then would you agree that the amount of  
14       debt that would go along with the common equity in  
15       your example would be \$4 billion?

16              MR. THOMAS:  Excuse me.  Can you explain what  
17       the basis is of the \$10 million?

18              MR. FOSCO:  Just a hypothetical.  I'm just  
19       trying to understand the accounting that she's been  
20       trying to explain.

21       BY MR. FOSCO:

22              Q       It's a hypothetical number.  But if ComEd's

1     assets -- all of its generation and T&D plant -- were  
2     \$10 million and let's assume there's nothing else,  
3     just for purposes of the hypothetical, then would you  
4     expect in this hypothetical that it would be showing  
5     \$4 billion in debt?

6             A     If you assume that there are no  
7     liabilities, which is a big assumption. But if in  
8     the hypothetical there were no liabilities and assets  
9     of 10 and equity of 4, then -- or, I'm sorry, equity  
10    of 6, then that would imply debt of 4.

11            Q     Well, since you kind of conditioned it too  
12    much for my comfort, what would be the amount of debt  
13    that would go to your example?

14            MR. THOMAS: You're asking now about --

15            MR. FOSCO: Her redirect Exhibit 1.

16    BY MR. FOSCO:

17            Q     What would be the amount of debt that would  
18    go along with the common equity amount of \$6 billion  
19    in your example?

20            A     Hypothetically?

21            Q     It's your example. It's your exhibit, not  
22    mine.

1           A     I guess just to stick with your numbers, if  
2     you want to stick with that, we can say that the  
3     \$10 million --

4           Q     I'm not comfortable with you conditioning  
5     your answers, unless you can't accept it for the  
6     hypothetical I presented. If you can't, you can't.

7           MR. THOMAS: The witness is allowed to  
8     condition their answer however they want. You can  
9     ask another question.

10          MR. FOSCO: Well, that's why I'm going this  
11     way. She went back to my condition. I wasn't there.  
12     That was her going there. That wasn't my question.  
13     I'm now on her exhibit.

14          MR. THOMAS: Is your question whether there was  
15     any debt --

16     BY MR. FOSCO:

17          Q     What would be the debt for purposes of  
18     illustration that would go along with your example?

19          MR. THOMAS: Do you understand the question?

20          THE WITNESS: I don't recall offhand. Do we  
21     have the Mitchell testimony?

22          MR. THOMAS: Carmen, this may well be a

1 question better addressed to Mr. Mitchell.

2 MR. FOSCO: Well, I don't think so because I'm  
3 trying to understand the accounting that she's --

4 THE WITNESS: I'm sorry. Never mind. Never  
5 mind.

6 You know, we can assume it's somewhere  
7 in the neighborhood of 5, \$5 billion. I really don't  
8 know offhand, as I'm sitting here, what the debt  
9 balance was as of October 20th. But if you want me  
10 to make an assumption, I'll say \$5 billion.

11 BY MR. FOSCO:

12 Q And would the 6 billion in equity plus the  
13 5 billion in debt be comparable to the capital  
14 structure in rate case? Would that be comparable to  
15 the debt and equity in the rate case?

16 A I believe there was a little bit of  
17 preferred stock outstanding at that time.

18 Q If we assume that doesn't exist, would that  
19 be correct?

20 A That's fair.

21 Q Okay. And would you agree that the  
22 \$11 billion in capital would be supporting

1     \$11 billion in rate base?

2           A     Well, as of the date -- you know, there's  
3     not a perfect correlation between the amount of the  
4     capital and the value of the rate base. You know,  
5     rate base isn't always equal to the net assets of the  
6     company. That's why it's the relative ratio that's  
7     used.

8           Q     It's close; is that correct? I mean, can  
9     we expect it to be close or -- it is -- let me put it  
10    another way.

11                         That 11 billion in capital is  
12    supporting some amount of assets?

13           A     Net assets and liabilities. But as we --  
14    not every asset and every liability is automatically  
15    includable in rate base.

16           Q     Okay. Well -- because I want to understand  
17    what happened to the assets that are supporting rate  
18    base. Can you give me a number of assets that would  
19    be reflected in your hypothetical then as you  
20    presented it? I mean, we can do it hypothetically.  
21    I'm not trying to really focus on the actual numbers.

22           MR. THOMAS: Carmen, are you asking, you know,



1       when the transaction occurred?

2       BY MR. FOSCO:

3           Q       On the day of the transaction, there was  
4       some amount of assets that's supporting ratepayer  
5       services, you know, transmission and distribution,  
6       T&D, generation plant?

7           MR. THOMAS:   And what this is illustrating,  
8       just so again we're clear, this is illustrating the  
9       merger transaction?

10          MR. FOSCO:   Right.   That's what I'm following.

11          THE WITNESS:   Yeah.   Well, I think where we  
12       were was that we assumed that net assets and  
13       liabilities were \$11 billion.   What I wasn't  
14       comfortable with was saying that that \$11 billion is  
15       also equivalent to rate base because there are, you  
16       know, always some level of assets and liabilities  
17       that are not automatically included in rate base.

18       BY MR. FOSCO:

19          Q       Okay.   It's the actual book value of the  
20       assets, right, that's included in rate base?

21          A       For those assets that are included in rate  
22       base, yes, they are generally recorded in rate base

1 at historical book value -- historical costs, I  
2 should say.

3 Q And I think Mr. Reddick covered this.  
4 Nothing happened to the assets on the date of this  
5 merger?

6 A The transmission and distribution assets,  
7 no.

8 Q Nor to generation on the date of the  
9 merger?

10 A Well, they were revalued. The nuclear  
11 assets, the generation assets were revalued, but...

12 Q But the same assets were still a supporting  
13 service, they weren't transferred -- they -- there  
14 was no change in the assets physically?

15 A In the use of the assets?

16 Q Right.

17 A No.

18 MR. THOMAS: As of the date of the merger.

19 BY MR. FOSCO:

20 Q As of the date of the merger?

21 A No.

22 Q Okay. Now, in your redirect Exhibit 1,

1     you're showing the \$2,634,000,000 adjustment to  
2     common equity; correct?

3             A     That's the effect of the writedown.

4             Q     Based on the effect of the writedown. And  
5     if we just look at that, there would be an adjusted  
6     common equity of 3.366 billion; is that correct?

7                     We would subtract 2634 from 6 billion;  
8     right? The accounting just for that alone.

9             A     Well, there would be no situation in which  
10    you would account for just the writedown and not the  
11    new purchase price.

12            Q     I wasn't saying that. I'm just -- the  
13    effect of that alone was to reduce common equity to  
14    3,366,000,000 subject to the other interest; correct?

15            A     Yeah. I -- I don't mean to mince words,  
16    but it didn't -- you know, it wasn't a stand-alone  
17    entry.

18            Q     That's fine. We're going to get there.  
19    Let me get through the rest of it.

20                     And the purchase price in your  
21    hypothetical, it's the actual 8.292 billion; correct?

22            A     Yes.

1           Q     And that actually is the ending common  
2 equity that you get from pushdown accounting?

3           A     Right.

4           Q     And what you're showing -- what do you call  
5 there -- I really can't read it through Dale and the  
6 sun -- but the 4.926 billion, you call that the net  
7 purchase price in your chart; correct? I mean,  
8 that's what it says?

9           A     That's the -- yeah.

10          Q     We're going to be looking at this.

11          A     It actually is equivalent to the amount of  
12 Goodwill necessary to get to the purchase that falls  
13 out of the purchase price. The purchase price is the  
14 8.926 billion.

15          Q     Okay. So the net purchase price is  
16 equivalent to the Goodwill adjustment. And it's  
17 derived by subtracting the purchase price -- I'm  
18 sorry, subtracting -- and that's what I was trying to  
19 get at -- is derived at by subtracting the  
20 3,366,000,000 which you're not showing from the  
21 purchase price; correct?

22          A     I'm not -- I thought your question was is

1 the purchase price -- the purchase -- the difference  
2 derived and that's not correct.

3 Q Can you restate that?

4 A I guess I'd probably ask that you restate  
5 the question because I wasn't following.

6 Q Okay. Tell us how you got the  
7 4,926,000,000.

8 A The 4.926 billion is the difference between  
9 the new purchase price of the company --

10 Q Which is 8 --

11 A -- which is 8.292 billion, and the --

12 Q What number on your chart can we look at to  
13 subtract?

14 A To subtract it? It would be the net of the  
15 8.292 billion and the 6 billion less the 2.634  
16 billion. If I could write on there again, I would  
17 show that.

18 Q So 8.292 plus --

19 A You know your starting point. You know  
20 your ending point. There was a fair value  
21 adjustment.

22 Q I understand how this happened, but we're

1 not getting it into the record.

2 A Okay.

3 Q What numbers were added and subtracted?

4 Walk through it that way.

5 A Okay.

6 Q Because what I believe happened is the  
7 2.634 was subtracted from the 6 billion leaving  
8 3,366,000,000. I mean, I know that mathematically.  
9 And that was subtracted from the 8.292 giving you  
10 4.296. I know that works mathematically.

11 A That's correct.

12 Q What is the 3 -- what would you call the  
13 3,366,000,000 number? What would you call the  
14 product of the \$6 billion common equity and the  
15 adjustment? Because we seem to be having trouble  
16 with the definitions. You didn't like what I called  
17 it.

18 A That would be the beginning equity balance  
19 less the fair value adjustments.

20 Q Is it also -- would it be fair to call it  
21 the fair value equity balance?

22 A No. The fair value equity balance is the

1 new equity balance of 8.292 because the purchase  
2 price establishes what the fair value of the equity  
3 is.

4 Q Okay.

5 A So that's why -- that is -- that is a given  
6 number that's established by the purchase price.  
7 It's not something that's derived or backed into by  
8 adding up the components that I have up there.

9 Q Okay. Is it the fair value of ComEd's  
10 assets and liabilities?

11 MR. THOMAS: Is what --

12 MR. FOSCO: The net fair value.

13 MR. DALE: What is the "it?"

14 BY MR. FOSCO:

15 Q The 3.366 billion, is that what was deemed  
16 under this purchase accounting to be the fair value  
17 of -- the fair value of ComEd's assets and  
18 liabilities?

19 A Excluding Goodwill, I believe that's what  
20 you would get to.

21 Q Okay. Okay. So under your --

22 A Including debt as a liability.

1           Q     Under your exhibit then, we have a Goodwill  
2     booked at 4,926,000,000; correct?

3           A     Yes. 4.926 billion is the Goodwill.

4           Q     And then ComEd is proposing an adjustment  
5     in this case to common equity of 2.292 billion;  
6     correct?

7           A     Right.

8           Q     And that's derived by subtracting the  
9     beginning common equity balance from the new common  
10    equity balance?

11          A     Right.

12          Q     Okay. When you make that adjustment, would  
13    you agree that the effect on Goodwill is that it's  
14    reduced to 2,634,000,000?

15          A     No. I mean, Goodwill is 4.926 billion.

16          Q     Nothing happens to Goodwill when you make  
17    your 2.292 million -- billion dollar adjustment?

18          A     It comes out of equity.

19          Q     And --

20          A     The full 4.926 billion comes out of equity  
21    as does the 2.634, the fair value adjustment.

22                     But Goodwill -- and just to be clear,



1 Goodwill is an asset that's recorded on the asset  
2 side of the balance sheet. We're talking about  
3 equity here. So Goodwill is not recorded within  
4 equity.

5 Q So with ComEd's adjustment, there was no  
6 adjustment to the asset side of the balance sheet?

7 A That's correct, but we did not include  
8 Goodwill as an asset in rate base.

9 MR. REDDICK: I wasn't clear on the question or  
10 the answer. Were you talking about at the time of  
11 the rate case or at the time of the merger?

12 MR. THOMAS: I believe he was talking about the  
13 time of the rate case.

14 THE WITNESS: I answered -- I understood his  
15 question to be in the rate case, and that's how I  
16 answered it.

17 BY MR. FOSCO:

18 Q Okay. So when the -- maybe you can do this  
19 for me. When the \$2.292 billion adjustment to common  
20 equity is made -- strike that.

21 I mean, you're referring to the asset  
22 side of the balance sheet. What do we call the other

1 side we're looking at?

2 A Equity.

3 Q The equity side. Okay. And when you made  
4 the \$2.292 billion adjustment, what else happens on  
5 the equity side? It's just deducted from common  
6 equity and there's no other adjustment?

7 A Well, it's a reduction to the equity  
8 balance that is used to determine the overall rate of  
9 return in the rate case.

10 Q Okay. Let's go now to the asset site of  
11 the balance sheet. The effect of this accounting  
12 entry was to increase assets by 4.926 billion,  
13 correct, by a Goodwill adjustment?

14 A Well --

15 Q Or is that incorrect?

16 A -- the Goodwill entry increased assets by  
17 4.926 billion, but there was also an entry that  
18 reduced net assets by 2.6 billion; so that the  
19 combined effect of the two, which was all part of the  
20 same application of purchase accounting, was to  
21 increase assets by 2.292 billion.

22 Q Thank you. And at the time of the merger,

1     if we assume hypothetically that ComEd had  
2     10 million -- or 10 billion in assets, there's now  
3     12 billion 292 in assets in ComEd's books as a result  
4     of purchase accounting?

5           A     I sort of lost track of what our assumption  
6     was, but if we assume that the starting net asset  
7     number was 10, the purchase accounting would have  
8     increased it by 2.292. So we would have had 12.

9           Q     I understand that ComEd is not including  
10    the 2.292 billion in rate base. Am I correct that it  
11    is included in the amounts included in arriving at  
12    ComEd's capital structure?

13          A     No. That's what we subtracted out was  
14    2.292 billion. So we took the -- ComEd's equity  
15    balance as of June 30th and made a pro forma  
16    reduction to reduce that by 2.292.

17          Q     When ComEd -- let's go to the second  
18    transaction. When ComEd restructured -- well, let's  
19    stick here one moment.

20                   ComEd wrote down its assets by a net  
21    amount of 2 billion -- 2.634 billion; correct?

22          A     Correct.

1           Q     And now we go to the second transaction.  
2     ComEd transferred, I think you testified, the  
3     generation assets at their restated fair values;  
4     correct?

5           A     Yes.

6           Q     And the Goodwill remains on its asset -- on  
7     the asset side of the balance sheet; correct?

8           A     Yes.

9           Q     And if ComEd had transferred them at their  
10    original cost value, that amount would have been  
11    eliminated?

12          A     I'm sorry. Can you repeat that?

13                     If your question is would the Goodwill  
14    -- or could the Goodwill have transferred, the answer  
15    to that is no. The Goodwill did not relate to the  
16    generation assets.

17          Q     So it's your testimony that the Goodwill  
18    balance was not used in any way in calculating  
19    ComEd's capital structure in terms of equity versus  
20    debt?

21          A     Yes, for purposes of the rate proceeding.

22          Q     Did you make an adjustment to the equity --

1     what adjustment was made to the equity balance for  
2     the transfer of the nuclear generation assets?

3             A     You mean when it actually happened or are  
4     you asking --

5             Q     As reflected in the rate case.

6             A     What's reflected in the rate case is the  
7     effect of the transaction as it actually occurred.  
8     And as I testified earlier, the net -- there was a  
9     net reduction in equity of 1.3 -- roughly  
10    \$1.3 billion as a result of the transaction.

11                     That actually occurred on ComEd's  
12    books. We didn't -- it's not an adjustment we made  
13    for rate making purposes. It's the actual effect.

14             Q     That reduction in equity was not equal to  
15    the amount of rate base that ComEd's total equity was  
16    supporting; is that correct?

17             A     The assets that were transferred -- I guess  
18    I'm not sure how to answer your question because I  
19    don't know that I understand it.

20             Q     Prior to the transfer of the generation  
21    assets, the \$6 billion in equity was contributing to  
22    ComEd's investment in those assets, correct, part of

1 the -- I can rephrase it if you'd like. Would you  
2 like me to rephrase it?

3 A Yes.

4 Q The \$6 billion in equity was utilized to  
5 support in part the pre-writedown value of ComEd's  
6 generation assets, correct, at the date and time of  
7 the merger?

8 A If you're asking if the assets that were  
9 transferred were funded in part by equity and in part  
10 by debt, the answer is yes. They were constructed  
11 using part debt, part equity.

12 Q And is that a fair assumption for the  
13 generation assets?

14 A That's what I'm referring to, the  
15 generation assets.

16 Q Okay. And if ComEd's book cost had only  
17 been 2 million instead of 6 point -- I mean,  
18 2 billion instead of 6.791 billion, it probably  
19 wouldn't have needed equity in that amount, it would  
20 have been less, right, because it would have been  
21 invested less in assets?

22 MR. THOMAS: Excuse me. I don't understand the

1 question. Can you repeat it? I mean, ComEd would  
2 need from what? Are we talking about the purchase  
3 price would be different or what are we talking  
4 about?

5 BY MR. FOSCO:

6 Q Let me put it this way.

7 The common equity balance was  
8 supporting -- and I know we don't have the exact  
9 numbers, but it was supporting -- depending on how  
10 much debt, it was supporting 7 point -- sorry, 6.7  
11 billion in generation assets, not 2 billion; correct?

12 A In part. Again, it was -- those assets  
13 were supported in part by equity, in part by debt.

14 Q Okay. I can accept that. I didn't mean to  
15 ask you about exact debt percentages.

16 And as a result of the purchase  
17 accounting, though, the assets were written down by  
18 4.791 -- well, a net amount of 2634 of liabilities,  
19 but the asset itself was written down 4.791 billion;  
20 correct?

21 A Yes.

22 Q And when ComEd transferred the nucs,

1     nothing was down to undo the \$2.634 billion  
2     reduction, was it?

3             A     I'm not sure what you mean by undo.   But  
4     ComEd -- as we established earlier, ComEd was  
5     required to -- 2.62 billion, that was their fair  
6     value.   GAP requires that they be transferred at fair  
7     value.

8             Q     Let me ask it this way.   After the  
9     transfer, ComEd's balance of common equity continued  
10    to reflect the 2.634 billion reduction; correct?

11            A     Yes.

12            MR. FOSCO:   Okay.   I have no further questions.  
13    I'm finished.

14            JUDGE DOLAN:   Any redirect.

15            MR. THOMAS:   I think it would be re-redirect.  
16    And I have no re-redirect.

17            JUDGE DOLAN:   Okay, great.   You're excused.  
18    Thank you.

19            THE WITNESS:   Thank you.

20            JUDGE DOLAN:   I hate to say it, but now we're  
21    really behind today.   So I suggest that we keep  
22    moving along rather than taking a break.   We'll try



1 to get as far as we can and we'll see where we're at.

2 So Mr. Lazare is up next, I believe.

3 MR. NEILAN: Your Honor, before we go forward  
4 with that, just a housekeeping matter. Based on  
5 discussions that we have had with counsel for the  
6 company, Mr. McClanahan, who is a witness for BOMA,  
7 the company has agreed that they will not have cross  
8 for Mr. McClanahan. Therefore, he will not be  
9 appearing.

10 And we would request that we would be  
11 able to submit his testimony for the record under an  
12 affidavit from Mr. McClanahan regarding his  
13 testimony. Well prepare that and submit it.

14 JUDGE DOLAN: That's fine.

15 Mr. Lazare, raise your right hand,  
16 please.

17 (Witness sworn.)

18

19

20

21

22

1                               PETER LAZARE,  
2       called as a witness herein, having been first duly  
3       sworn, was examined and testified as follows:  
4                               DIRECT EXAMINATION  
5                               BY  
6                               MR. FOSCO:  
7               Q     Could you please state your name for the  
8       record and spell your last name?  
9               A     Peter Lazare, L-a-z-a-r-e.  
10              Q     And, Mr. Lazare, by whom are you employed?  
11              A     Illinois Commerce Commission.  
12              Q     And what's your position with the Illinois  
13       Commerce Commission?  
14              A     I'm a senior rate analyst.  
15              Q     Okay. Mr. Lazare, have you prepared  
16       written testimony for purposes of this proceeding?  
17              A     Yes.  
18              Q     Do you have in front of you what has been  
19       marked for identification as ICC Staff Exhibit 6.0  
20       Corrected, including Schedules 6.1 and 6.2?  
21              A     Yes.  
22              Q     And there is both a public and a

1 confidential version of that testimony?

2 A Yes.

3 Q And am I correct that the schedules are not  
4 confidential?

5 A Yes.

6 (Discussion off the record.)

7 BY MR. FOSCO:

8 Q Mr. Lazare, was ICC Staff Exhibit 6.0  
9 Corrected and the accompanying schedules prepared by  
10 you or under your direction and control?

11 A Yes.

12 Q Is the information contained therein true  
13 and correct to the best of your knowledge?

14 A Yes.

15 Q Do you have any corrections or  
16 modifications to that testimony?

17 A No.

18 MR. FOSCO: Your Honor, for the record, I would  
19 indicate that the exhibit was filed on E-docket on  
20 March 20th of '06. This an update to our exhibit  
21 list since it was filed. And it was filed -- it's  
22 the first document and it's got the document name of

1 166796, the public version. And the confidential  
2 version appears under Item 1. It doesn't have a  
3 docket number.

4 BY MR. FOSCO:

5 Q Mr. Lazare, did you also prepare rebuttal  
6 testimony in this proceeding?

7 A Yes.

8 Q And do you have in front of you what's been  
9 marked as ICC Staff Exhibit 7.0 Corrected, including  
10 schedule 17.1?

11 A Yes.

12 Q And was this -- this docket was in both  
13 confidential and public version; is that correct?

14 A Yes.

15 Q And the schedule is public and not  
16 confidential?

17 A Yes.

18 Q Okay. And was this document prepared by  
19 you or under your direction and control?

20 A Yes.

21 Q And is the information contained therein  
22 true and correct to the best of your knowledge?

1           A     Yes.

2           Q     Do you have any changes or corrections to  
3 your prepared rebuttal testimony?

4           A     No.

5           MR. FOSCO: Your Honor, for the record, I would  
6 indicate that the rebuttal testimony, ICC Staff  
7 Exhibit 17.0 Corrected, and schedule 17.1, the public  
8 version, were filed on March 14, 2006. It's Item 1  
9 on the E-docket. And it's document No. 166251. The  
10 confidential version was filed on the same date and  
11 it's Item 1.

12                       With that, I would move for admission  
13 into evidence of ICC Staff Exhibit 6.0 Corrected,  
14 including schedule 6.1 and 6.2, both the public  
15 version and the confidential version, as well as ICC  
16 Staff Exhibit 17.0 Corrected, including schedule  
17 17.1, and, again, both the public version and  
18 confidential version.

19           JUDGE DOLAN: Any objection?

20                       Items -- or Staff Exhibit 6.0 with  
21 schedules 6.1 and 6.2 -- you said public and a --

22           MR. FOSCO: The public version includes the

1 schedules. The confidential version was just the  
2 testimony.

3 JUDGE DOLAN: For 6.0? There's a 6.0 public  
4 and confidential or just --

5 MR. FOSCO: There's public and confidential of  
6 6.0. And the schedule was attached to both filings,  
7 but it's not confidential.

8 JUDGE DOLAN: All right. So 6.0 -- Staff 6.0  
9 confidential will be admitted into the record. 6.0  
10 public with schedules 6.1 and 6.2 will be admitted.

11 And then we have rebuttal, Staff  
12 rebuttal 17.0 Corrected confidential admitted into  
13 the record; 17.0 public will be admitted into the  
14 record, and schedule 17.1 would be admitted into the  
15 record.

16 MR. FOSCO: And, just for the record, all of  
17 those are corrected.

18 JUDGE DOLAN: Okay. All right.

19 (Whereupon, Staff  
20 Exhibit No. 6.0 and 7.0 were  
21 admitted into evidence  
22 as of this date.)

1           MR. FOSCO: We tender Mr. Lazare for cross  
2 examination.

3           MR. GARG: Your Honor, the Attorney General's  
4 Office has a few questions for Mr. Lazare.

5                   CROSS EXAMINATION

6                   BY

7           MR. GARG:

8           Q     Good morning. My name is Rishi Garg and I  
9 work for the Attorney General's Office. I have a few  
10 questions for you.

11          A     Good morning.

12          Q     Please refer to your direct testimony at  
13 Page 46 beginning with the question on Line 1122.  
14 There you discuss the relationship between the supply  
15 mitigation plan and this case; correct?

16          A     Yes.

17          Q     I would like to focus specifically on  
18 residential customers. First, did the Commission  
19 approve the mitigation plan in ComEd's case?

20          A     Yes.

21          Q     Would it be accurate to say that the  
22 purchase of the supply mitigation plan is to try to

1 control the level of increase that the average  
2 residential customer would pay for bundled service?

3 A It's a little bit broader. For all  
4 customers within the CPPB auction to limit the  
5 potential impact on all customers in an auction and  
6 that includes both residential and nonresidential  
7 customers.

8 Q But with regard to the residential class,  
9 would it be accurate to say that the purpose is to  
10 try to control the level of increase that the average  
11 residential customer would pay for bundled service?

12 A Yes.

13 Q And, in your opinion, why is it -- focusing  
14 on the residential class, in your opinion, why is it  
15 important to control the level of increase that the  
16 average residential customer would pay for bundled  
17 service?

18 A Because there's an issue of rate shock that  
19 has been a general rate-making concern that you don't  
20 want to have the impacts -- adverse impacts of rate  
21 increase be concentrated too greatly on any specific  
22 group. And it's a matter of judgment, but that's the



1 concern behind the mitigation proposal.

2 Q The supply mitigation plan treats  
3 residential heating and nonheating customers as  
4 separate customer classes; correct?

5 A Yes.

6 Q Still focusing on the residential class,  
7 would it be correct that your mitigation -- that the  
8 supply mitigation plan is likely to result in a  
9 slightly larger increase for nonheating customers and  
10 a significantly lower increase for heating customers  
11 when compared to the increases that would occur  
12 without the mitigation plan?

13 A I think that's the expectation.

14 Q Is it fair to say that for the residential  
15 class, the thing that is being mitigated or  
16 controlled by the mitigation plan is the level of the  
17 rate increase for heating customers?

18 A That's part of it, but there are also  
19 nonresidential customers that would also be  
20 potentially impacted.

21 Q Okay. ComEd currently has separate rates  
22 for single family and multifamily residential

1 customers; correct?

2 A Yes.

3 Q Does the supply mitigation plan address or  
4 attempt to mitigate the level of rate increases for  
5 multifamily customers without regard to their status  
6 as heating customers?

7 MR. FOSCO: Your Honor, I realize that this  
8 topic is in Mr. Lazare's testimony, but it's in there  
9 in terms of its impact on rate design. And I'm not  
10 sure I see we're -- that we're headed towards that.  
11 We seem to be --

12 MR. GARG: My questions are with regard to rate  
13 design.

14 JUDGE DOLAN: Subject to that, he can answer.

15 THE WITNESS: I'm sorry. Could you repeat the  
16 question?

17

18 BY MR. GARG:

19 Q Does the supply mediation plan address or  
20 attempt to mitigate the level of rate increases for  
21 multifamily customers without regard to their status  
22 as heating customers?

1           A     Only within the context of they would be  
2     within the larger residential group. And if, for  
3     example, residential customers -- a residential class  
4     was to be mitigated because they exceeded the limits  
5     in my proposal, then they would also have their  
6     increase mitigated as well.

7           Q     Is it correct that the mitigation plan for  
8     residential customers calculates the average cost per  
9     kilowatt hour?

10          A     The mitigation plan is based on the total  
11     bill for the customer. And it's based upon the  
12     percentage increase of the total bill for each  
13     customer class. And that percentage increase is  
14     compared to the average. And then mitigation kicks  
15     in based upon how that comparison might take place.

16          Q     Does your mitigation plan address -- strike  
17     that.

18                     Does your mitigation plan address  
19     impacts on customers whose consumption differs  
20     significantly from the average?

21          A     It's only at the class level. So it  
22     doesn't go within the individual rate class and do a

1 deeper level mitigation. So the mitigation is only  
2 at the class level. So it does not go to individual  
3 customers and mitigate each individual bill.

4 Q You state in your direct testimony on  
5 Page 46 at Lines 1130 to 1133 that the rate  
6 mitigation plan will not have a material effect on  
7 the design and delivery service rates; correct?

8 A Yes.

9 Q Did you read Mr. Rubin's testimony showing  
10 that some low-use residential customers' bills would  
11 increase by 100 percent or more even after the supply  
12 mitigation plan is filed?

13 A I remember reading that.

14 Q Okay. Does your mitigation plan address  
15 the situation where a low-use residential customer's  
16 bill increases by a large percentage because of the  
17 distribution charges established in this case?

18 A Not specifically.

19 Q Have you proposed any other plan in this  
20 case to address the impacts on low-use residential  
21 customers?

22 A Only to the extent that I propose a

1 reduction in the adjustment to the revenue  
2 requirement. But otherwise, I don't.

3 MR. GARG: Thank you. I have no more  
4 questions.

5 MR. NEILAN: Your Honor, BOMA has a few  
6 questions. For the record, my name is Paul Neilan,  
7 N-e-i-l-a-n. Giordano and Neilan representing the  
8 Building Owners and Managers Association of Chicago.

9 CROSS EXAMINATION

10 BY

11 MR. NEILAN:

12 Q Good morning, Mr. Lazare.

13 A Good morning.

14 Q I have a few questions for you. Just a  
15 moment.

16 Mr. Lazare, if I may refer you to your  
17 rebuttal testimony, Staff Exhibit 17.0, Page 40,  
18 Lines 1008, to Page 41, Lines 1013.

19 MR. FOSCO: For the record, Line 1008 in the  
20 corrected copy starts on Page 49.

21 MR. NEILAN: Hang on. Maybe I'm --

22 THE WITNESS: That's okay. If you just direct

1 me to the Q and A, I'm sure I can --

2 BY MR. NEILAN:

3 Q Sure. Give me just a moment. Let me look

4 at a different version of it. It's the Q and A, Do

5 you find the arguments by IIEC Witness Jalfant

6 (phonetic) and BOMA Witness McClanahan persuasive?

7 A I'm sorry. I was looking at my direct.

8 Q Sure. That's Exhibit 17.0.

9 A Okay. I'm there.

10 Q Okay. Is it correct that your position is

11 that the number of customers, rather than the

12 location of customers, is the key determinative of

13 costs of connection?

14 A The number of customers?

15 Q Is it correct that your position is that

16 the number of customers, rather than the location of

17 customers -- excuse me. Let me reverse that.

18 I believe your position is that the

19 location of customers, rather than the number of

20 customers, is the key determinant in determining the

21 costs of connection?

22 A My key -- that's not quite correct. My key

1 argument is that these are essentially demand-related  
2 costs. And I don't distinguish costs of connection  
3 from the demand-related distribution plant.

4 Q Okay. Let me ask you a question about a  
5 statement in your rebuttal testimony. And I'm  
6 reading this -- the same Q and A appears in my  
7 version, Line 1008, the sentence beginning, However.

8 However, I would argue that the more  
9 relevant factor in determining the costs of  
10 connection is not the number of customers, but rather  
11 the location of customers within the utility service  
12 territory?

13 A Right, but I would not consider it a  
14 significant cost. I consider part of the demand  
15 related.

16 Q Okay. When you have used the case -- the  
17 term "minimum distribution system," what do you mean  
18 by that or what do you understand by that?

19 A It's what the companies would -- what would  
20 be argued is the cost of establishing a system with  
21 basically zero or negligible demand that would  
22 connect customers to the utility grid.

1           Q     Again, looking at the same question and  
2     answer, is it correct it's your position that there  
3     is a distant relationship between distribution costs  
4     and the number of customers?

5           A     Yes.

6           Q     You give an example in your rebuttal  
7     testimony. I'm referring to Staff Exhibit 17.0,  
8     Page 40. And I believe this appears on Line 1010 to  
9     Line 1012.

10                    You give an example of the cost to  
11     connect one rural customer versus the cost to connect  
12     a dozen customers in a multifamily dwelling --

13          A     Yes.

14          Q     -- in an urban setting; is that correct?

15          A     Yes.

16          Q     If I took your example and changed it a  
17     little bit and assume that we've got two  
18     subdivisions, we've got one subdivision that's, let's  
19     say, 10 miles south of your urban setting and it's  
20     got a hundred customers located in it, and let's take  
21     another subdivision and it's 10 miles north of your  
22     urban location and it's got a thousand customers in



1       it.   Are you with me?

2           A     Yes.

3           Q     When you look at these two subdivisions,  
4       the one with the hundred and the one with a thousand,  
5       which one would use more poles and wires and  
6       transformers?

7           A     Well, first off, these days when you build  
8       a subdivision, generally, they're built underground.  
9       So, you know, the poles would -- may not factor in as  
10      clearly because it would be mostly underground wires  
11      and so forth.

12          Q     Perhaps I can clarify.  Let me restate the  
13      question.

14                       When you look at these two  
15      subdivisions, one with a hundred customers and one  
16      with a thousand customers, which one would have more  
17      distribution plant?

18          A     It would be hard to just, without looking  
19      at the specifics of each subdivision, I think, draw a  
20      conclusion one way or another about which had more  
21      and which had less.

22                       There could be a number of factors

1     beyond the number of customers that could determine  
2     the investment in distribution plant in each  
3     subdivision.

4             Q     What kind of factors would you look at?

5             A     Oh, for example, the size of the houses or  
6     structures. I would assume that there would be some  
7     relationship between the size of the home and the  
8     level of demand.

9                     So the capacity of the facilities for  
10    larger homes would probably have to be greater on a  
11    unit basis than for smaller homes. How the  
12    subdivision is laid out. You know, some subdivisions  
13    are homes that are on small parcels, others might  
14    have an acre or more.

15                    And I'm sure there are other factors  
16    when you're looking at investment distribution plant  
17    that would determine the relative costs for the two  
18    subdivisions.

19             Q     Would it help if I refined the example a  
20    bit to make it more specific?

21             A     It depends on how you refine it.

22             Q     Okay. You have the two subdivision, one

1 with a hundred customers, one with a thousand  
2 customers. Did you ever hear of a town called  
3 Levittown or something called Levittown?

4 A I used to live in Levittown.

5 Q In New York?

6 A Yes.

7 Q Let's assume that our two places -- one  
8 with a hundred customers and one with a thousand  
9 customers -- are just like Levittown and every house  
10 is pretty much the same. Of those two, in your  
11 judgment, which one would involve more distribution  
12 plant?

13 A Well, if you kept all factors equal and  
14 only everything was the same but only varied the  
15 number of homes, then I would my I would agree that I  
16 would expect there to be higher distribution plant in  
17 the Levittown with more homes.

18 But in the real world, I don't think  
19 that kind of ability to make that kind of -- sort of  
20 experiment -- you know, that controlled experiment,  
21 would be possible.

22 Q Okay. So it's your position that that kind

1 of controlled experiment would not be possible, but  
2 you'd have one customer in a rural setting and how  
3 far away is the next rural customer in the example  
4 you gave in your testimony?

5 MR. FOSCO: Are we referring to the witness's  
6 direct testimony?

7 MR. NEILAN: The witness' rebuttal testimony,  
8 Exhibit 17.0, at least on the printout I have,  
9 Line 1010 on Page 40.

10 THE WITNESS: They could be half a mile or a  
11 mile away from each other and that I think would be  
12 sufficient to -- for my conclusion.

13 BY MR. NEILAN:

14 Q Yet there's only one customer that you're  
15 talking about?

16 A Yes.

17 Q And it's your position that my example of a  
18 hundred customers and a thousand customers is unreal,  
19 but your example of one single rural customer is; is  
20 that correct?

21 A I think the way you framed your  
22 hypothetical, I think, you know, with just limiting

1     it to one variable, the fact that it's limited to one  
2     variable is not real. I think the fact that you have  
3     a rural customer that can be a mile or more away from  
4     other customers, that occurs, I think, very often in  
5     the real world.

6           Q     And you're saying there's not a setting  
7     where you would see a thousand houses served by some  
8     amount of distribution plant, whatever that might be,  
9     or a hundred customers served by some amount of  
10    distribution plant, that's not real?

11          A     The one issue I take here is just that if  
12    you see a thousand houses and a hundred houses, my  
13    expectation is there would be a number of different  
14    variables that would govern the distribution plant in  
15    those two subdivisions that would go beyond simply  
16    having a number of customers as a sole determinant of  
17    the relative costs.

18          Q     And there are no such variables in the  
19    example that you gave?

20          A     I'm saying -- in my example, I'm saying  
21    that it's possible for one customer, because of the  
22    distance, to have far higher costs of connection than

1     for, you know, a group of customers that are in close  
2     proximity distance-wise because that one customer is  
3     so far from other customers.

4             Q     Do you agree that ComEd's charges to its  
5     customers should be cost based, delivered service  
6     charges should be cost based?

7             A     Yes.

8                     (CHANGE OF REPORTER)

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1 (Change of reporters.)

2 Q And you refer again to your rebuttal  
3 testimony Staff Exhibit 17.0, Page 40, Lines 1004 and  
4 1006. Is it correct that your position is that the  
5 minimum distribution system is used as a means of  
6 shifting costs from large customers to small  
7 customers?

8 A I'm sorry, what was the question again?

9 Q We're referring to 1004 to 1006. You say  
10 the minimum system is a flawed concept that relies on  
11 the distant relationship between distributions costs  
12 and the number of customers as a basis to shift costs  
13 from the demand to the customer function and thereby  
14 benefiting large customers at the expense of smaller  
15 customers on the system.

16 A Yes.

17 Q It's your position that the minimum  
18 distribution system is a basis for that kind of cost  
19 shifting from a large to small?

20 A Yes.

21 Q Did you review Mr. McClanahan's direct and  
22 rebuttal testimony in this proceeding in BOMA

1 Exhibits 2.0 and 4.0?

2 A I did, but I have not looked at them  
3 recently, so I'm not, you know, completely up to  
4 speed on what he stated.

5 Q Do you recall a reference and in  
6 Mr. McClanahan's testimony to the Electric Utility  
7 Cost Allocation manual of the National Association  
8 Regulatory Utility Commission?

9 A Yes.

10 Q Do you recall the following text from the  
11 manual that was quoted by Mr. McClanahan -- and I can  
12 show you Exhibit 2.0, if you desire.

13 Mr. McClanahan states on BOMA  
14 Exhibit 2.0, Page 13, Lines 287 to 289, Distribution  
15 plant accounts 364 through 370 involve demand and  
16 customer costs, the customer component of  
17 distribution facilities is that portion of costs  
18 which varies within the number of customers.

19 A Yes.

20 Q Is it your position that NARUC is wrong --  
21 that's N-A-R-U-C -- NARUC is wrong when it says that  
22 distribution plant in FERC accounts 364 to 370



1       involve both customer costs and demand costs?

2           A     Yes.

3           Q     That they are wrong?

4           A     That from the standpoint of Illinois that  
5       it's not appropriate.  So it's wrong for Illinois.

6           Q     Let me reask that question.

7                       Those FERC accounts -- and it's your  
8       position that those FERC accounts don't contain any  
9       customer costs.

10          A     Yes.

11          Q     Do you agree with Mr. McClanahan's position  
12       contained in BOMA Exhibit 2.0, Page 12, Lines 270 to  
13       273 that in ComEd's Embedded Cost of Service Study  
14       ComEd considers all distribution plants -- plant in  
15       its associated cost to be demand-related rather than  
16       classifying some costs as customer-related costs?

17          A     Yes.

18          MR. NEILAN:  That concludes my questioning.  I  
19       have no further questions.

20

21

22

1 CROSS-EXAMINATION

2 BY

3 BALOUGH:

4 Q Good morning, Mr. Lazare. My name is  
5 Richard Balough and I represent the CTA, and I have a  
6 few questions for you this morning.

7 I see you're from Springfield; right.

8 A I live there.

9 Q Okay. You are familiar with my client, the  
10 CTA; right?

11 A Yes.

12 Q Have you used the CTA when you're here in  
13 Chicago?

14 A Yes. I used to live in Chicago.

15 Q I hope those were all good experiences.

16 I want to focus a little bit on your  
17 testimony concerning environmental costs, if I may.  
18 And am I correct that one of your concerns has to do  
19 with the problem of global warming.

20 A Yes.

21 Q And global warming can come from numerous  
22 sources from fossil fuels; is that correct?

1           A     Yes.

2           Q     And I think you cited one of them is the  
3     automobile?

4           A     Yes.

5           Q     And another would be from home heating  
6     using fossil fuels?

7           A     Yes.

8           Q     And another would be generating  
9     electricity?

10          A     From fossil fuel sources.

11          Q     From fossil fuel sources. Right?

12                     And the problem there is a concern  
13     about the release of carbon dioxide into the  
14     atmosphere.

15          A     Yes.

16          Q     Would you agree with me that the use of  
17     automobiles accounts for about 43 percent of energy  
18     use in this country?

19          A     I'm not sure.

20          Q     You're not sure. Okay.

21                     Well, let me ask you a different  
22     question. Would you agree with me that when you use

1 mass transit systems that that reduces the use of  
2 automobiles.

3 A As a rule, yes.

4 Q I'm sorry?

5 A As a rule, yes.

6 Q And in this case, we're concerned not about  
7 the use of buses but we're concerned about the use of  
8 electricity for traction power of trains; do you  
9 understand that?

10 A Yes.

11 Q And would you agree with me that to the  
12 extent that riders in the city of Chicago, for  
13 example, can use a mass transit train, that that  
14 would reduce the effect of global warming caused by  
15 automobiles?

16 A Yes.

17 Q And I assume during your preparation for  
18 this case that you reviewed the CTA testimony?

19 A Yes, but that also I haven't read very  
20 recently so I might not be totally up to speed on  
21 that.

22 Q Well, in our testimony, did you remember

1     were we talked about the fact that, for example, on  
2     the Kennedy Expressway quarter that the CTA during  
3     rush hour carries 50 percent of the people during  
4     rush hour?

5             A     I'm sorry, I don't remember that specific  
6     passage.

7             Q     For a moment, will you assume with me that  
8     that statement does appear?

9             A     Okay.

10            Q     And would you agree with me also that if as  
11     a result of this case or other factors riders --  
12     fares on the CTA had to increase, that would decrease  
13     ridership?

14            A     Yes.

15            Q     And if ridership on the CTA is decreased,  
16     then in order for people to get where they're going,  
17     we would have so assume then that the use of  
18     automobiles would increase?

19            A     That's a reasonable assumption.

20            Q     And that would contribute more to global  
21     warming?

22            A     Yes.

1           Q     By the way, let me ask you this: Are you  
2     aware that each fully load train, for example, of the  
3     CTA would reduce -- take approximately one thousand  
4     cars off the highways?

5           MR. RATNASWAMY: Your Honors, I hate to but I  
6     really have to object. This doesn't seem to be cross  
7     of anything Mr. Lazare said. I don't know what  
8     proposal in the case it relates to. I can't think of  
9     one. I'm just not sure what this whole line of  
10    questioning is about.

11          MR. BALOUGH: Oh, your Honor, I think it  
12    relates directly. He's talking about global warming  
13    and also the effect of the rate increase that it  
14    would have on the CTA, the whole fact concerning that  
15    we should take into account environmental concerns.  
16    If we have a proposal in this case whereby shifting  
17    costs to the CTA it, in fact, increases global  
18    warming because we're putting more people in cars  
19    because the fares have to go up. I think that  
20    directly relates to the case.

21          MR. RATNASWAMY: I hate to follow-up; but if  
22    someone can point me to a proposal that someone has

1 actually made that this is relevant to, then you  
2 won't hear from me for a while, but I can't --.

3 MR. BALOUGH: We could hope.

4 MR. RATNASWAMY: -- think of what it is.

5 MR. BALOUGH: Your Honor, I think the fact of  
6 the way that they're proposing, the CTA will be  
7 allocated costs in this case and to the increase and  
8 the despair treatment on the CTA for 10 megawatts and  
9 above, I think we have an approximate question.

10 BY MR. BALOUGH:

11 Q I think we have a question pending back  
12 there somewhere.

13 A I'm sorry.

14 Q We lost it in all that. I know. Let me  
15 try again.

16 Are you aware that each fully loaded  
17 train estimated to take approximately one thousand  
18 cars off the highway.

19 A I'm not personally aware of that fact.

20 Q In your testimony you discuss that  
21 environmental factors should be considered as part of  
22 rate designs; is that correct?

1           A     Yes.

2           Q     And would you agree then also that if  
3     transportation as a result of this that  
4     transportation costs per mass transit increases  
5     because the rate design we need to take that factor  
6     into account?

7           A     I don't necessarily know if I can agree to  
8     that just because I'm talking about cost associated  
9     with the consumption of electricity, so I'm limiting  
10    my discussion to costs that arise from that  
11    consumption.

12                         So I think what you're talking about  
13    is something a little more indirect that might fall  
14    outside the scope of mine.

15          Q     Well, certainly if you have a concern about  
16    global warming, you wouldn't want us to do something  
17    in this case that has the perverse effect of  
18    increasing global warming; would you?

19          A     I think the issue is really, from my  
20    standpoint, a matter of first recognizing that these  
21    are costs of consumption and then incorporating these  
22    cost into a rate design for delivery of services, and



1 I think you're talking about something that's like a  
2 step removed from my level of discussion; so I'm just  
3 not in a position to -- at this juncture to subscribe  
4 to a sort of that next step that you're talking about  
5 in terms of rate design.

6 And, you know, if the proposal was,  
7 you know, placed within the case, I could look at it  
8 but I'm not ready at this juncture to, you know, come  
9 on board onto that kind of proposal.

10 Q Well, certainly you would not be  
11 encouraging this Commission to add to the global  
12 warming; would you?

13 MR. FOSCO: Your Honor, I guess I have to  
14 object. I think the witness had a specific proposal  
15 as far as rate design and it was based upon  
16 environmental concerns, but I don't think that  
17 transforms him into a general environmental witness  
18 for the purpose of cross-examination.

19 JUDGE NOLAN: I'll sustain it.

20 BY MR. BALOUGH:

21 Q Mr. Lazare, I'd like to have you -- I  
22 believe in your testimony you quote John Rowe; is

1       that correct?

2           A     In direct?

3           Q     I believe it's Exhibit 6 on Page 38.

4           A     Correct.

5           Q     And he is the president of Exelon; is that  
6       correct?

7           A     That's my understanding.

8           Q     And I believe in -- if I I'm reading your  
9       quotation of Mr. Rowe correctly it says, That at  
10      Exelon, we accept that signs of global warming is  
11      overwhelming. We accept that limitations on  
12      greenhouse gas emissions will prove necessary. Until  
13      those limitations are adopted, we believe that  
14      business should take voluntary action to begin the  
15      transition to a lower carbon future.

16                   Can you tell me in this docket what  
17      actions that you're aware of that ComEd has taken to  
18      begin the transition to a lower carbon future.

19           A     I'm not aware of any in this docket.

20           MR. BALOUGH: That's all the questions. Thank  
21      you.

22           JUDGE NOLAN: Thank you.

1 CROSS-EXAMINATION

2 BY

3 MR. ROBERTSON:

4 Q Good morning, Mr. Lazare. My name is Eric  
5 Robertson. I represent the Illinois Industrial and  
6 Energy Consumers.

7 A Good morning.

8 Q I'd like to refer you to your Exhibit 6.0.  
9 Page 4 is my citation, but I'm not sure the line  
10 numbers are correct. I'm looking at Lines 79 to 80.

11 There, if I'm correct, you state that,  
12 However, class revenue should be conformed to the  
13 revenue requirement proposed by the staff in this  
14 case; is that correct.

15 A Yes.

16 Q And then at Pages 36 to 37, bottom of  
17 Page 36, top of Page 37, you suggest that you would  
18 recommend a revenue allocation that differs from the  
19 company's proposed revenue allocation if staff's  
20 proposed revenue requirement is adopted; is that  
21 correct?

22 A Can you just read the statement there.

1 JUDGE NOLAN: Mr. Lazare, can you speak into  
2 the mic.

3 THE WITNESS: Can you read the passage that  
4 you're on.

5 BY MR. ROBERTSON:

6 Q There is a question that says, Is there any  
7 factor that would cause you to recommend an  
8 allocation of the revenue that differs from the ComEd  
9 proposal?

10 Do you see that question.

11 A Yes.

12 Q And you say Robertson the answer to that  
13 question is, Yes; is that correct?

14 A Yes.

15 Q And that factor is adoption of a revenue  
16 requirement below that recommended by the company; is  
17 that correct?

18 A Yes.

19 Q What is your recommendation in that event?

20 A I'm sorry, that did not include a  
21 discussion of that. My recommendation would be just  
22 an equal percentage change to all class revenues to

1 conform to the staff revenue requirement.

2 Q So if I understand what you're saying, is  
3 all of the rate elements would be scaled up or down  
4 depending on the level of overall increase or  
5 decrease in the revenue requirement approved by the  
6 Commission?

7 A All the class revenues will be scaled up or  
8 down, and the one key rate design difference would be  
9 my proposal to shift customer costs to recovery  
10 through usage or demand charges.

11 Q And what do you mean by that statement?

12 A That was my proposal for 20 percent shift,  
13 a reduction in customer related costs. And recovery  
14 of those additional customer costs in the demand or  
15 usage charges to reflect the cost -- environmental  
16 costs associated with electricity consumption.

17 Q Maybe I misunderstood. Are you saying that  
18 proposal would also be effected by a lower revenue  
19 requirement or it would remain the same, your  
20 proposals would remain the same?

21 A It would be within each class revenues. It  
22 would be -- the class revenues would all be on equal

1     percentage basis.  It would be adjusted.  And then  
2     after my shift of those 20 percent customer costs,  
3     then all the rate charges would be adjusted on the  
4     equal percentage basis to conform to the new set of  
5     class revenues under the staff revenue requirement if  
6     it was adopted.

7           Q     So are you -- just to make sure I  
8     understand, the class revenues would go up or down by  
9     an equal percentage depending on whether there was an  
10    increase or decrease in the company's revenue  
11    requirement?

12          A     From the company's proposal.

13          Q     And within the classes, there would be no  
14    corresponding adjustment in charges, except to  
15    reflect your proposal, the shift cost from the  
16    customer component of the charges to the demand  
17    component of charge?

18          A     First, they would be shifted and then they  
19    would have to be, secondly, adjusted on equal  
20    percentage basis up or down to ensure that they  
21    recover class revenue requirement associated with the  
22    staff overall revenue requirement, assuming that was

1       adopted in this case.

2               Q     All right.  Now, I'd like to refer you to  
3     your direct testimony at Page 35.  There's a question  
4     that begins, Please discuss the effect cost study  
5     proposed by the company.

6                       Do you have it.

7               A     Yes.

8               Q     Now, in your preparation for this case,  
9     would it be true to say that you reviewed the  
10    company's costs studies from dockets 99-0117 and  
11    01-0423?

12              A     I did not look at them in depth, but I did  
13    look at the one in 01-0432, and I don't remember if  
14    it was 99-0117.

15              Q     All right.  So it wasn't necessary for you  
16    to look at those studies in order to reach the  
17    conclusion that you describe here?

18              A     Well, I had previously looked at the cost  
19    studies because I had been involved in previous ComEd  
20    dockets.  And when I looked at the 01-0423 cost  
21    study, it was similar, from my memory, to the  
22    previous cost study; so I concluded that they were

1 similar approaches.

2 Q So based on your review of the most recent  
3 cost study and your recollection of past reviews and  
4 understanding of this study at 99-0117; is that  
5 correct?

6 A Yes.

7 Q Now, in your review of those studies either  
8 for this case or for other purposes, did you notice  
9 any specific increase in the investments or expense  
10 items attributable to customers with demands of more  
11 than 10 megawatts?

12 A I'm not quite clear on your question.

13 Q Did you notice whether or not study  
14 indicator, the elements of the study indicator,  
15 whether there had been an increase from one case to  
16 the other in investments or expense items  
17 attributable to that would ordinarily have been  
18 attributable to customers with demands of greater  
19 than 10 megawatts?

20 A I don't remember.

21 Q Now, I'd like to talk a minute about your  
22 rebuttal testimony. I'm looking at Page 30 of



1 Exhibit 17.0 Corrected. And I believe the citation  
2 is to your question and answer beginning at Line 754.

3 Do you have that.

4 A Yes.

5 Q Now, there you talk about precedent for  
6 recovery of environmental costs and delivery rates;  
7 is that correct?

8 A Yes.

9 Q And that precedent is put in your  
10 testimony, Rider 31, the decommissioning expense  
11 adjustment loss; is that correct?

12 A Yes.

13 Q Would you agree that Rider 31 was proposed  
14 and adopted and the tariff sheet indicates filed with  
15 the Commission pursuant to Section 16, dash, 114 of  
16 the Public Utilities Act?

17 A Yes.

18 Q Would you agree that there is no specific  
19 provision of the Public Utilities Act that authorizes  
20 the recovery of the environmental, the cost  
21 associated with consumption of electric power and  
22 energy and delivery rates?

1           A     Yes.

2           Q     Would you agree that a major distinction  
3     between the -- your reliance on the environmental --  
4     strike that.

5                     Now would you agree with me that  
6     ComEd's current decommissioning collections end at  
7     the end of 2006.

8           A     I'm not sure when it ends, so I have no  
9     reason to disagree.

10          Q     Do you accept subject to check?

11          A     Yes.

12          Q     And, therefore, ComEd will not be  
13     collecting these costs from any customer on this  
14     system after 2006 through this Rider?

15          A     If it expires and none takes its place,  
16     yes.

17          Q     And the rates in this case are intended to  
18     take effect on or about January 1, 2007?

19          A     Yes.

20          Q     Now, you testified in the company's last  
21     rate case, did you not, on 01-0423?

22          A     Yes.

1           Q     And you testified in that case as to the  
2     proper cost of service study to be used to establish  
3     ComEd's delivery service rates; is that correct?

4           A     Yes.

5           Q     Did the Commission adopt your  
6     recommendation in that case?

7           A     The Commission adopted the company's cost  
8     of service study, if I remember.

9           Q     And in your preparation for this case, have  
10    you had cause to review any portion of the order in  
11    Docket 01-0423 relating to the cost of service study?

12          A     I think I read it, yes.

13          Q     Now, would you agree with me that in that  
14    case the Commission approved rates that the  
15    Commission found to be just and reasonable?

16          A     Yes.

17          Q     And is it your recollection or do you have  
18    any recollection of the Commission explicitly  
19    deciding to introduce any cross subsidies in the  
20    rates approved?

21          A     I don't remember them doing that.

22          Q     Now, the rates approved by the Commission

1 in that case are in effect today; are they not?

2 A Yes.

3 Q And that includes the current definition of  
4 maximum kilowatts delivered; is that correct?

5 A For delivery services?

6 Q Yes.

7 A Yes.

8 Q Yes?

9 A Yes. I'm sorry.

10 Q That was your answer.

11 Now, would you agree that the rates  
12 the Commission found to be just and reasonable in the  
13 last case also included the current rate class  
14 structure for nonresidential rates.

15 A Yes.

16 MR. ROBERTSON: I have nothing further. Thank  
17 you.

18 JUDGE NOLAN: Thank you. We just -- I want to  
19 go off the record for one second.

20 (Whereupon, a discussion  
21 was had off the record.)

22 JUDGE NOLAN: Back on the record.

1           MR. RATNASWAMY: Your Honor, I didn't want to  
2     interpose, but I guess technically it has to be  
3     characterized as an objection. Because of the burden  
4     of proof and the order of proof, we take the position  
5     that we ought to have the last cross. And the fact  
6     that CUB isn't here, I don't think should lead to us  
7     to have us go before them.

8           JUDGE NOLAN: Well, the way I look at it is, if  
9     they're not here, they're probably not going to be  
10    asking questions.

11                               (Whereupon, a discussion  
12                               was had off the record.)

13           JUDGE NOLAN: We're going to assume that CUB  
14     waived any cross-examination, and we're going to  
15     proceed. And from now on, everybody else, just so  
16     you understand, that -- we're on a very tight  
17     schedule as it is. So if you're not here when it's  
18     your turn to ask questions, we're passing you up.

19                               CROSS-EXAMINATION

20                               BY

21                               MR. RATNASWAMY:

22           Q     Good afternoon, Mr. Lazare.

1           A     Good afternoon.

2           Q     It turns out the first thing I want to ask  
3     you about is also global warming. In particular,  
4     your proposal to move certain costs from customer  
5     charge to delivery and demand charges.

6                     You describe your proposal in your  
7     direct at Lines -- well, we're at 1046 to 1055.

8                     I think they still are; is that  
9     correct?

10          MR. FOSCO: The question that begins, Your  
11     specific proposal?

12          MR. RATNASWAMY: Yeah.

13     BY MR. RATNASWAMY:

14          Q     1046 to 1055 of your direct?

15          A     Yes.

16          Q     Okay. And that's still your proposal after  
17     your rebuttal?

18          A     Yes.

19          Q     You refer there to certain types of  
20     charges. You refer to customer charges and delivery  
21     charges and demand charges. I just want to make sure  
22     that we know exactly which charges you mean.

1                   Is it correct under the company's  
2   proposed rate design that for each delivery service  
3   customer class, except for the lighting classes, that  
4   there's three monthly delivery service charges.

5           A     For each class?

6           Q     For each class.

7           A     Well, I think for the residential there's  
8   only customer charges and usage charges.  And  
9   then --.

10          Q     Well -- go ahead.

11          A     You mean that -- the sum totality is three  
12   sets of charges.

13          Q     Okay.

14          A     But for individual classes, it might only  
15   be two charges.

16          Q     What I'm referring to is there's a customer  
17   charge, a standard metering service charge, and a  
18   distribution facilities charge.  Does that sound  
19   right to you?

20          A     Yeah.  My assumption -- yes.

21          Q     And the customer charge and standard  
22   metering service charges, those are fixed monthly

1 charges stated in dollars and cents?

2 A Yes.

3 Q And the third charge, the distribution  
4 facilities charge is either an amount in cents per  
5 kilowatt hour or it's in dollars and cents amount per  
6 kilowatts delivered; is that right?

7 A Yes.

8 Q So in your testimony when you refer to  
9 delivery and demand, are you referring to the two  
10 forms of the distribution facilities charge?

11 A Yes.

12 Q Would you agree that the distribution  
13 facilities charge is what's called a volumetric  
14 charge?

15 A Yes. The volumetric charges versus the  
16 demand charges.

17 Q Got you. Thank you.

18 The 20 percent reduction that you  
19 refer to in the line that begins on -- the sentence  
20 that begins on 1048, that applies only to the  
21 customer charge; is that right.

22 A Correct.



1           Q     For the metering charges, you were leaving  
2 alone?

3           A     Yes.

4           Q     Now, you did not expressly say in your  
5 testimony whether your proposal does or does not  
6 apply to the lighting customer classes, which don't  
7 have a charge or called a customer charge. So what  
8 is your attention on that?

9           A     Well, since 20 percent of nothing would be  
10 nothing, it wouldn't apply.

11          Q     Okay. If you could go back now to Line 912  
12 to 913 of your direct. And there you refer to the  
13 impact of electricity usage on globing warming?

14          A     Yes.

15          Q     Do you recall being asked in a data  
16 request, Have you performed any analysis of whether  
17 to what extent your proposed rate design change would  
18 lead to any changes in customer demand or usages?

19          A     Yes.

20          Q     Okay. And was your answer that you had not  
21 performed such an analysis?

22          A     Yes.

1           Q     And you intended that to be a correct and  
2 complete answer?

3           A     Yes.

4           Q     And were you also asked if you had  
5 performed any analysis of whether or to what extent  
6 your proposed rate design change would lead to any  
7 changes in greenhouse gas emissions?

8           A     Yes.

9           Q     Was your answer that you had not performed  
10 such an analysis?

11          A     Yes.

12          Q     Did you intend that to be a correct and  
13 complete answer?

14          A     Yes.

15          Q     That's that subject.

16                     If I can move on now to your testimony  
17 on the subject of demand charge periods, which  
18 begins, I believe, on Line 1196 of your direct  
19 testimony.

20                     First, is it correct that in making  
21 this proposal you didn't refer to any specific  
22 tariffs sheets or rates.

1           A     Yes.

2           Q     Okay. Could you tell us specifically, sir,  
3     what it is you're trying to change here in this  
4     proposal?

5           A     This is for customers who have the time  
6     different -- differentiate demand meters where  
7     they're on-peak commands can be distinguished from  
8     their off-peak demands. And for those customers,  
9     maximum on-peak demands are what I consider should be  
10    the relevant demands for determining demand charges.

11          Q     Thank you.

12                     And within the context of that  
13    proposal when you use the term peak period, which  
14    hours exactly do you mean.

15          A     It's the current retail on-peak period. I  
16    think, if I remember, it's 9:00 a.m. to 10:00 p.m. I  
17    don't remember exactly.

18          Q     When you say current, are you referring to  
19    delivery rates or bundled rates, or are you just not  
20    sure?

21          A     Delivery rates.

22          Q     And under your proposal would the

1 calculation of the customers demand be calculated on  
2 a monthly basis?

3 A Yes.

4 Q Okay. If I could refer you to Lines 1211  
5 through 1219 of your direct on the next page. And in  
6 particular, there's a sentence that begins on  
7 Lines 1216 which states, The collective demands of  
8 those customers may be expected to peak during times  
9 of peak demand. Do you see that?

10 A Yes.

11 Q Okay. Would you agree that that is a  
12 generalization but it is not always true?

13 A Yes.

14 Q Are you an engineer?

15 A No.

16 Q Have you carefully studied ComEd's  
17 distribution system planning criteria?

18 A Have I studied the distribution --.

19 Q System planning criteria.

20 A What was that?

21 Q Planning criteria.

22 A Oh.

1                   No.

2           Q     Do you agree that ComEd's distribution  
3     system includes, among other things, tens of  
4     thousands of miles of overhead distribution lines?

5           A     Yes.

6           Q     Okay. And tens of thousands, if not, more  
7     distribution transformers, for example?

8           A     Yes.

9           Q     So you would agree that there are -- I'm  
10    sorry.

11                   Do you agree that there are some  
12    distribution system elements where the highest level  
13    of demand is not going to be during the peak period.

14          A     I believe that's possible, yes.

15          Q     Do you know whether there, for example, are  
16    any large factories that are ComEd customer that  
17    operate more at night than during the day?

18          A     I don't know specifically any customers for  
19    where that's the case.

20          Q     Let's make it a hypothetical then.

21                   Suppose that the highest level of  
22    demand on -- when the element of ComEd distribution

1     system does occur during off-peak period, what is  
2     your understanding, if you have one, of whether the  
3     people who work on planning ComEd's distribution  
4     system take into account the highest demand if it's  
5     an off-peak demand.

6           A     My understanding would be those facilities  
7     that were sized according to those off-peak demands  
8     engineer -- an engineer would take those off-peak  
9     demands into account sizing this facility I just  
10    discussed.

11          Q     And without me showing any tariff sheets,  
12    do you recall whether the proposed general terms and  
13    conditions contain a definition of ComEd's service  
14    obligation that is defined in terms of the customers  
15    peak demand without any criteria for whether it's on  
16    or off peak?

17          A     I'd have to see the specific language  
18    there.

19          Q     This actually is an attachment to the  
20    testimony of Mr. Alongi and Mr. McInerney. I don't  
21    think I should mark it as its own exhibit.

22                   Assuming or accepting the

1 representation that this is one of the proposed  
2 tariff sheet in the case, do you see that in the  
3 fifth paragraph of original sheet No. 524 there is a  
4 definition of what a standard distribution facility  
5 is.

6 A Yes.

7 Q Okay. And would you agree that the  
8 definition where it refers to the customers highest  
9 demand, those criteria don't make any distinction  
10 between whether it's on or off peak?

11 A Yes.

12 Q Would you propose to change that to have  
13 the system design only for the on-peak demand?

14 A No.

15 Q Why not?

16 A Because for these particular facilities,  
17 that customers demand would be the key criteria. But  
18 it's also to be considered that the customers demands  
19 don't just drive these individual facilities. They  
20 also help shape overall demands for the entire  
21 delivery system. And so those -- how they relate to  
22 other demands in shaping those costs should also be

1 taken into account.

2 Q Okay. You were asked some questions early.  
3 I want to make sure. Your proposal is intended to be  
4 revenue neutral; is that right?

5 A Yes.

6 Q And it's intended to be revenue neutral in  
7 two different senses, in terms of the overall revenue  
8 requirement and in terms of each class revenue  
9 requirement?

10 A Yes.

11 Q And what does revenue neutral mean?

12 A That based upon given set of billing  
13 determinants and given the level of revenues -- well,  
14 actually, not for a given set. Given the level of  
15 revenues, and there would be different billing  
16 determinants because on-peak demands may not be  
17 exactly equal to 24-hour demands.

18 So given the overall revenues for the  
19 class and probably the different set of billing  
20 determinants, whatever rates were established for  
21 on-peak demand charges times, they're corresponding  
22 billing determinants should be equal to a 24-hour



1 demand charge multiplied times the associated billing  
2 determinants for that 24-hour demand charge.

3 Q And if I went back to the global warming  
4 proposal, you would intend it to be revenue neutral  
5 in the same way you just discussed on this proposal?

6 A Yes.

7 Q Do you recall -- are you familiar with the  
8 company's existing Rider 6 entitled Optional -- I  
9 typed it wrong. I'll get the name right.

10 Optional or Nonstandard Facilities.

11 A I looked at it but not recently. I would  
12 need some refreshing with the word.

13 Q Okay. Without looking at it, do you have  
14 any recollection as to whether it also defines  
15 standard facility in terms of demands without regard  
16 to whether they are peak or off peak?

17 A No. I have to look at it.

18 MR. RATNASWAMY: This one I will ask that it be  
19 marked as ComEd Cross Exhibit 2.

20 (Whereupon, ComEd Cross  
21 Exhibit No. 2 was marked  
22 for identification.)

1 THE WITNESS: I'm sorry, what was the question?

2 BY MR. RATNASWAMY:

3 Q There's actually not a question at the  
4 moment.

5 Does this refresh your recollection as  
6 to whether this tariff sheet also when it refers to  
7 standard facilities and customer demands make no  
8 distinction between whether the demand is on peak or  
9 off peak.

10 A Could you just direct me to the specific  
11 language in this page.

12 Q I'm really focusing on the first paragraph  
13 actually.

14 A Okay.

15 Yes. I agree with you.

16 Q Okay. Thank you.

17 If I could direct your attention,  
18 please, to Lines 949 and 951 of your rebuttal.

19 What is -- I'm sorry. Are you there.

20 A Yes.

21 Q What is a non-coincident peak demand?

22 A Non-coincident peak demand is the specific

1 demand for either for a class, just one neutral class  
2 peaks as compared to this system as a whole. For  
3 customer, that would just be when the customer has  
4 peak demand as compared to the class or system as a  
5 whole.

6 Q Okay. In Lines 949 to 951 of your rebuttal  
7 testimony, when you refer there to the peak of the  
8 very large load over 1,000 kW class, are you  
9 referring to their highest non-coincident peak demand  
10 for the year?

11 A Yes.

12 Q Did you review the portion of the company's  
13 Part 285 filing which has load data by month for this  
14 class?

15 A No.

16 MR. RATNASWAMY: I'd like to mark ComEd Cross  
17 Exhibit 3.

18 (Whereupon, ComEd Cross  
19 Exhibit No. 3 was marked  
20 for identification.)

21

22 MR. FOSCO: Are you going to move for admission

1 of 2.

2 MR. RATNASWAMY: No.

3 MR. FOSCO: Okay. So we'll just have gaps.

4 Just a question I have.

5 MR. RATNASWAMY: I could if anyone wanted me  
6 to.

7 MR. FOSCO: No.

8 MR. RATNASWAMY: I move for the admission of  
9 ComEd Cross Exhibit No. 2.

10 JUDGE NOLAN: Any objection?

11 All right. Then enter ComEd Cross  
12 Exhibit No. 2 into the record.

13 (Whereupon, ComEd Cross

14 Exhibit No. 2 was admitted

15 into evidence.)

16 BY MR. RATNASWAMY:

17 Q Would you agree that as to the column  
18 relating to the very large load over 1,000 kW class  
19 that this is -- comes from the same data that was  
20 used in answering the data request that you refer to  
21 on Line 950?

22 MR. FOSCO: I would just ask that we get some

1 foundation of what we're looking at. I don't know  
2 it's just --.

3 MR. RATNASWAMY: Okay.

4 MR. FOSCO: I'm not sure you identified it for  
5 the record.

6 MR. RATNASWAMY: This is Schedule E-7(a)(2)  
7 part 2, Page 3 of 5 from the company's filing under  
8 Part 285 of the Commission's rules founded in 83  
9 Illinois Supreme Court in this case.

10 THE WITNESS: I'm not sure about whether -- how  
11 this relates to the data provided in the data  
12 response. I asked in the data response when various  
13 classes had their peak demands. I'm not sure how the  
14 company tied the two sets of data together.

15 BY MR. RATNASWAMY:

16 Q So as you sit here right now, you don't  
17 know how any other 11 months of the year the  
18 non-coincident peak of this particular class -- the  
19 highest non-coincident peak compares with the one  
20 that's referenced in data response PL 701?

21 A That's correct.

22 Q I think in this instance, unfortunately, I

1     can't move this exhibit because it doesn't recognize  
2     the source of the data.

3                     If I could direct your attention to  
4     Lines 951 to 953 of your rebuttal.

5             A     Okay.

6             Q     I wanted to clarify, when you refer there  
7     to the 99 percent figure, is what you're referring to  
8     there how the company's Embedded Cost of Service  
9     Study allocate the distribution plant cost?

10            A     Yes.

11            Q     And what is your understanding, if any, of  
12     whether in the Embedded Cost of Service Study some of  
13     the distribution plant costs are allocated based  
14     coincident peaks and some are based on non-coincident  
15     peaks?

16            A     I don't know remember exactly how it's  
17     broken down, but I remember -- my understanding is  
18     that in each case, those costs are based upon  
19     commands during the peak period.

20            Q     Okay. I don't know if you'll be able to  
21     answer this question but if can you, please do.

22                     Based on what you do recall about how

1 the Embedded Cost of Service Study allocated the  
2 costs, do you agree that, all else being equal, your  
3 proposal would be closer to how the ECOSS allocate  
4 costs if instead of using a monthly calculation you  
5 used an annual ratcheted calculation of the customers  
6 demand.

7 A Annual --.

8 Q Ratcheted.

9 A I'm not clear what you mean by ratcheted.

10 Q In other words, instead of doing a monthly  
11 calculation, that you would use the highest for the  
12 last 12 months figure.

13 A Could you maybe just restate the question.

14 Q Okay. And, again, it may depend on how  
15 well you remember the ECOSS.

16 In terms of how the ECOSS allocates  
17 costs, would your proposal be closer to how the ECOSS  
18 allocate costs if it was based on an annual ratcheted  
19 demand rather than a monthly demand.

20 A I'm not sure.

21 MR. RATNASWAMY: Your Honor, this is a very  
22 natural break point, do you want me to -- I know you

1     talked about going maybe another five or so minutes.

2     Do you want me to keep going. ?

3             JUDGE NOLAN:   Obviously, you got a lot more  
4     than what you would start with your next subject.

5                     Okay.   Why don't we go ahead and  
6     break.   And I guess looking at the time, I guess  
7     we'll reconvene at 1:30.   That will give a little  
8     more than 45 minutes.

9                             (Whereupon, a lunch  
10                            recess was taken.)

11

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1 JUDGE DOLAN: All right. Mr. Ratnaswamy, are  
2 you ready to proceed.

3 MR. RATNASWAMY: Yes, sir.

4 CONTINUED CROSS-EXAMINATION

5 BY

6 MR. RATNASWAMY:

7 Q Hello again, Mr. Lazare.

8 A Hello.

9 Q From this point on, unless I forget about  
10 something I said earlier, all of my questions are  
11 going to be about your proposed adjustments relating  
12 to general plant to intangible plant, and  
13 administrative and general plant?

14 A All of my answers will be about rate  
15 design.

16 (Laughter.)

17 Q First I would like to discuss some  
18 terminology and some examples with you and hopefully  
19 we will make this more concrete and less abstract.

20 Is it correct that although you are  
21 not an accountant, you are generally familiar with  
22 the uniform system of accounting?

1           A     Yes.

2           Q     And what, in brief, what is the uniform  
3     system of accounting?

4           A     It's a system of accounts as it applies to  
5     the utility that basically identified various utility  
6     functions and identify how costs should be accounted  
7     for within the various functions.

8                     And that's a very general response.

9           Q     Is it sometimes called the USOA?

10          A     I have heard the term, yes.

11          Q     Okay. And is it correct that the uniform  
12     system of accounts has cost accounts and it also has  
13     revenue accounts?

14          A     Yes.

15          Q     And it has accounts for capital assets like  
16     plant, as well as, accounts for operating expenses?

17          A     Yes.

18          Q     And you referred to functions.

19                     Would you agree -- utility functions  
20     excuse me -- not all, but many of the accounts in the  
21     uniform system of accounts are to be listed under  
22     headings or they have names to refer to one of four

1 functions; those being production, transmission  
2 distribution, and customer?

3 A Yes.

4 Q And the production account, the production  
5 in the system of accounts could include -- does  
6 include not only cost of generation, but also  
7 purchase power costs?

8 A Yes.

9 Q Okay. And the term "customer function"  
10 covers customer accounts and customer service and  
11 customer information?

12 A Yes.

13 Q Now, you agree, also that some of the  
14 accounts aren't under headings that tie them to those  
15 four functions?

16 A Well, you have, for example, AG accounts.  
17 There are common costs that are indirect costs, yes.

18 Q And in this particular case, three types of  
19 accounts which are at issue, which are directly tied  
20 to those four functions sort of by name, are the  
21 general plant accounts, and the intangible plant  
22 accounts and the administrative and general expense

1 accounts, right?

2 A Yes.

3 Q And as their name suggests, the general and  
4 intangible plant accounts relate to plant capital  
5 investments; whereas, A&G administrative and general  
6 is operating expense?

7 A Yes.

8 Q In brief, what is a FERC Form No. 1?

9 A That's an annual form that utilities file  
10 with the FERC that has a break down of the various  
11 utility costs to these accounts that we're  
12 discussing.

13 Q And I think you said, but I'm not sure.  
14 ComEd and the other utilities are subject to file it  
15 annually?

16 A Yes.

17 Q And are you familiar with the audit report  
18 that goes with the FERC Form 1 each year?

19 A No.

20 Q Are you aware that there is an audit  
21 report?

22 A I'm not familiar with it.

1           Q     Is it also true that under the Illinois  
2 Commerce Commission's rules, the utilities also file  
3 a copy of the FERC Form 1 each year with the Illinois  
4 Commerce Commission?

5           A     Yes.

6           Q     What is an ICC Form No. 21?

7           A     My understanding is it's sort of a file for  
8 the Commission. It's got a break down of utility  
9 costs by FERC account that is filed before the  
10 Commission itself.

11          Q     And is it correct that under the rules that  
12 apply to rate cases, in part, the 285 Rule, ComEd had  
13 to file its most recent Form No. 1 and its most  
14 recent Illinois Form No. 21 as part of it's 285  
15 submission?

16          A     That was something the accounting side has  
17 established. I'm not familiar with the specific  
18 role.

19          Q     Okay. You were a witness -- I think  
20 someone established this earlier.

21                     You were a witness in ComEd's first  
22 delivery service rate case Docket 99-0107; is that

1 correct?

2 A Yes.

3 Q And what was the test year in that case?

4 A If I remember, '98? I'm not sure. Either  
5 '98 or '97.

6 Q Would you accept subject to check, it was  
7 '97?

8 A Okay.

9 Q And you were a witness in ComEd's second  
10 and most recent delivery services rate case, Docket  
11 01-0423?

12 A Yes.

13 Q Okay. Was the test years 2000 in that  
14 case?

15 A Yes.

16 Q In each of those cases and in this case, to  
17 what extent have you reviewed data from ComEd's FERC  
18 Form No. 1?

19 A Well, I looked at the FERC Form 1, and I  
20 examined the accounts and expense accounts and also  
21 labor, payroll costs from those forms.

22 Q Okay. Another term. I would like to use

1 the term, "functionalization."

2 Do you agree that in the context of  
3 ratemaking, and in this case in particular, when you  
4 talk about functionalizing general plant and  
5 intangible plant and administrative and general  
6 expenses that we are talking about a process, however  
7 it's done, dividing them up between those four  
8 functions that we mentioned earlier?

9 A Well, the key -- the key is not so much  
10 dividing them up to like distribution and customers  
11 separately because we're looking at a revenue  
12 requirement that covers both.

13 So it's -- the keys are more  
14 production transmission than distribution customer  
15 collectively for revenue requirement purposes.

16 Q Okay. And just to avoid -- I don't know  
17 that anyone used the word, but just to avoid a  
18 potential misunderstanding.

19 Refunctionalization is something else.  
20 Is it correct that, basically, it refers to  
21 application of some criteria that were adopted by  
22 FERC to do determinations of whether something is a

1 transmission or distribution cost?

2 A I'm not totally sure of the definition that  
3 you just provided. I'm not aware of it.

4 Q I'm sort of trying to put faces on some of  
5 these accounting terms. I would like to talk about  
6 some examples.

7 Assume -- this a hypothetical. That  
8 ComEd would have a large information system, in other  
9 words, a large, really large, piece of software that  
10 would keep track of its customer information and its  
11 use for billing purposes. So that's my hypothetical.

12 Do you agree that you would expect the  
13 cost of that to be treated as intangible plant in the  
14 uniform system of accounts?

15 A My understanding is that software is  
16 included in the intangible plant.

17 Q I think you were in the room yesterday when  
18 Mr. Costello referred to Supervisory Control and Data  
19 Acquisition Equipment or SCADA.

20 Do you know what that is?

21 A My understanding is it was  
22 distribution-related communications that were -- I



1     don't know it in depth.

2           Q     Do you know whether ComEd has recorded  
3     SCADA costs in General Plant Account 397, which is  
4     called Communications Equipment?

5           A     I think that's my -- I think my  
6     understanding could not be totally right that it is.

7           Q     I'm sorry. Is or is not?

8           A     Is.

9           Q     And now just a super, simple hypothetical.  
10                   ComEd buys a car that's used by a  
11     meter reader. That's just what it's used for. It's  
12     used everyday by the meter reader driving around.

13                   Would you expect that to be booked in  
14     a general plan account?

15          A     Yes.

16          Q     The one relating to vehicles?

17          A     Yes.

18          Q     And in terms of administrative and general  
19     expenses, would you agree there is a lot of different  
20     types of expenses that go in the administrative and  
21     general accounts?

22          A     Yes.

1           Q     Would you agree that two of those many  
2     kinds are pension expenses and healthcare costs for  
3     employees?

4           A     Yes.

5           Q     I want to talk about your specific proposal  
6     in quantitative terms.

7                     Is it correct that in your rebuttal  
8     your revised proposed downward adjustment to ComEd's  
9     general plant and intangible plant is a gross amount  
10    of \$303,924,637.00?

11          A     That sounds correct.

12          Q     Do you want to look at Schedule 17.1,  
13    Page 2 of 2 please.  Actually, it's on Page 1 also.

14          A     Yes.

15          Q     And it's correct to refer to that as the  
16    gross amount, right, because if you actually were to  
17    make this adjustment, you have to make certain other  
18    adjustments to depreciation reserve and accumulate to  
19    defer income taxes on the rate base side of things  
20    and also to depreciation expense on the operating  
21    side?

22          A     Yes.

1           Q     Have you, anywhere in your testimony,  
2     broken down that roughly 304 million between general  
3     plant and intangible plant?

4           A     No.

5           Q     Now, in terms of -- obviously, your  
6     testimony speaks for itself. But in general is it  
7     fair to say that proposed adjustment is based on an  
8     adjustment that was approved in ComEd's last delivery  
9     services rate case?

10          A     Yes.

11          Q     And it's not the same amount as the last  
12     case because you have recognized that some of the  
13     dollars that were the subject of the adjustment last  
14     time were never in the rate case here to begin with?

15          A     The reason -- are you talking about the  
16     difference between the 405 million?

17          Q     Right.

18          A     That is to recognize retirements that have  
19     occurred as Mr. Hill pointed out to me in I think  
20     rebuttal testimony.

21          Q     Okay. And is it correct that your proposed  
22     adjustment to administrative general expenses, you

1 are not proposing to disallow a certain amount of  
2 dollars but rather you are proposing to cap  
3 administrative general expenses at a certain number;  
4 is that right?

5 A At no increase over what was approved in  
6 the last DST case.

7 Q And that was \$176,684,000.00?

8 A Yes.

9 Q And in terms of the staff revenue  
10 requirement presented in rebuttal, do you agree that  
11 the incremental impact of your adjustment on top of  
12 all the other staff adjustments is \$72,513,000.00?

13 A I don't know have the exact number before  
14 we, but I would accept that subject to check.

15 Q Now, would you agree that the adjustments  
16 in the last case that underlie the adjustments we  
17 have just been talking about were based on  
18 functionalization?

19 A Yes.

20 Q Okay. And so they weren't based on, for  
21 example, a finding that some plant was imprudent?

22 A Correct.

1           Q     And they weren't based on a finding that  
2 something was not used and useful, right?

3           A     Yes.

4           Q     So in terms of your adjustment to general  
5 plant and intangible plant, you are moving from the  
6 proposed rate base in your proposal costs that  
7 Commonwealth Edison's functionalization analysis  
8 would indicate for delivery services; is that right?

9           A     Can you say that one more time.

10          Q     Sure.

11                     The company did its own  
12 functionalization analysis of general plant and  
13 intangible plant and A&G, right?

14          A     Yes.

15          Q     And so you're removing costs that the  
16 Company's analysis contends are costs in providing  
17 delivery services?

18          A     Yes.

19          Q     Now, if you're removing them from the  
20 distribution and customer functions, what function  
21 are you saying those costs serve?

22          A     I say that they --

1           MR. FOSCO: First of all, I'm sorry.

2                       Is this about both planned and the  
3   expense? I think it's a compound question if it is.

4           MR. RATNASWAMY: I'm not sure why it would be  
5   but I'm happy to ask it as to each of them.

6   BY MR. RATNASWAMY:

7           Q    In terms of general plant, your proposed  
8   adjustment removes the cost from what the company  
9   says is of distribution and customer --

10          A    Well, maybe just to give you a little maybe  
11   a better explanation.

12                       With general and intangible plant it's  
13   a matter of functionalization. I would say with  
14   respect to administrative and general expense, the  
15   issue at hand is not functionalization.

16                       It's a matter of whether the company  
17   has justified its proposed increase or not. So I'm  
18   sorry if I might have characterized this slightly  
19   different for you.

20          Q    The level that was set in the last case of  
21   administrative and general expenses, that was based  
22   on the Commission's finding about the

1 functionalization of administrative and general  
2 expenses?

3 A Well, they functionalized general  
4 administration expenses to determine what they  
5 considered to be a just and reasonable level of  
6 expense for the distribution.

7 And it's really in my estimation a  
8 conclusion about here's an appropriate level of A&G  
9 expenses for your distribution side of your business.

10 Q Did you testify in what is sometimes called  
11 the unbundling docket, Docket 99-0013?

12 A Yes.

13 Q Let me back up a second for terminology of  
14 methodology.

15 In general are there two different  
16 methods of functionalizing general plant and  
17 intangible plant and administrative and general  
18 expenses which is direct assignment versus using a  
19 general allocator?

20 A Those are the two methods we had discussed  
21 before the Commission here, yes.

22 Q Okay. And under the direct assignment

1 method, someone reviews the costs or expenses in a  
2 particular count. If they can determine that those  
3 amounts are associated with a particular function,  
4 then they assign them to that function.

5                   If they can't make that determination,  
6 then they use some other cost -- some other  
7 allocation method that reflects cost causation; is  
8 that right?

9           A     Yes.

10          Q     And under the allocator method or the  
11 general allocator method, you don't do the direct  
12 assignment, you just use some ratio or some other  
13 general mathematical calculation to divvy up the cost  
14 between the different functions?

15          A     Yes.

16          Q     Yesterday, Judge Dolan asked you about the  
17 general labor allocator. What is the general labor  
18 allocator?

19          A     Well, the general labor allocator takes  
20 labor costs associated with direct own and functions  
21 for the utility and uses that as, those ratios, as a  
22 basis to functionlize indirect, either plant costs or



1 expenses, among the various functions based upon the  
2 labor associated in each of those functions.

3 Q Okay. So is it correct that in the last  
4 ComEd rate case, the last delivery services rate  
5 case, the Commission used the general labor allocator  
6 to functionlize general plant and intangible plant?

7 A Yes.

8 Q Okay. And the particular calculation of  
9 the general labor allocator that was used was a ratio  
10 of ComEd's labor expenses in each of the four  
11 functions; is that right?

12 A Yes.

13 Q And using the general labor allocator, the  
14 Commission approved the functionalization of  
15 400-something million dollars of general intangible  
16 plant as being production rather than being delivery  
17 services; is that right?

18 A Yes.

19 Q Okay. So of the 300 million of that  
20 roughly of that 400 million, that you're presenting  
21 in your proposed adjustment in this case, are you  
22 functionalizing those costs to the production

1 function?

2 A I am saying those costs that were  
3 functionalized to the production function should not  
4 be re functionalized -- functionalized back to the  
5 distribution function as the company proposes in this  
6 case.

7 So I'm just arguing for the status  
8 quo, which based upon current rates as they exist  
9 today, does not allocate those costs to the  
10 distribution function.

11 Q Well, should we understand your testimony  
12 to be saying based on the determination in the last  
13 case, "I, Mr. Lazare am saying that the determination  
14 was made that they're production and they still are  
15 production?"

16 MR. FOSCO: Objection; I think he asked and  
17 answered already.

18 He asked the witness what he was  
19 saying about production and the witness answered.

20 JUDGE DOLAN: I will sustain the objection.

21 BY MR. RATNASWAMY:

22 Q Okay. We'll try it this way.

1                   We have got, referring to the four  
2   functions, can I refer to them as P, T, D and C?  is  
3   that okay with you?

4           A     (Shaking head up and down.)

5           Q     And D, as well as C, is delivery services?

6           A     Yes.

7           Q     So ComEd has, among other things, in its  
8   rate base about \$305 million of general tangible  
9   plant costs, gross amount, which it says are delivery  
10  services, right?  That you are proposing to adjust  
11  out, right?  Or to remove from the rate base?

12          A     I would say probably a better  
13  characterization is those are costs that are not in  
14  the rate base that ComEd is proposing.

15          Q     But they're in ComEd's FERC Form 1, right?

16          A     Right.  But they're not in the adjusted  
17  reasonable -- they don't help to develop just and  
18  reasonable rates that currently exist for ComEd  
19  delivery services customers.

20          Q     Is what you just said based on anything  
21  other than the order in the last case?

22          A     Yes.  It's based on the order the fact that

1     what is approved for ratemaking is a set of G and I  
2     plant or distribution that does not include that  
3     \$305 million.

4             Q     Okay. So 305 million isn't here. Is it  
5     under transmission? Is it under production? Or is  
6     it nowhere doing something else?

7             A     It is not, for the purposes of where we  
8     stand today, it is not part of what the Commission  
9     has determined is necessary for the utility to form  
10    its distribution function.

11            Q     Is it doing one of these other things or is  
12    it not doing any of these things?

13            A     Well, when the Commission allocated costs  
14    to distribution, that the key element for ratemaking  
15    was the allocation of costs to distribution. That  
16    was what the term, "revenue requirement" was.

17                         So from the standpoint of the revenue  
18    requirement, the issue is not where they stand today,  
19    but the fact that they don't stand in distribution  
20    for the purposes of ratemaking.

21            Q     Well, isn't there a proposal by one of the  
22    parties in this case that proceeds on the premises

1     that the amounts you are disallowing or removing,  
2     whatever verb you want to use, are production costs?

3           A     Well, that's an issue for that other party  
4     and maybe those are something you might bring up to  
5     the other party, but that's not my proposal in the  
6     case.

7           Q     So it's no -- you have no opinion about  
8     what function, if any, these costs serve; is that  
9     right?

10          A     Well, certainly when today when you have a  
11     utility that no longer has a production function,  
12     that's clearly outside the range of our -- the  
13     Commission's jurisdiction.

14                    So I'm not in a position to really  
15     follow those costs and identify exactly for what  
16     purpose they're being used because the Commission no  
17     longer regulates that part of the Exelon Company.

18          Q     Well, suppose that in the \$400 million that  
19     was removed from the rate base the last time, that  
20     that \$400 million included, I wish I could draw a  
21     car, included the car that the meter reader is  
22     driving around on and the Commission just got it

1     wrong. Does that mean that in this case we have to,  
2     nonetheless, proceed from the premises that the car  
3     that the meter reader drives around is really being  
4     used to support a nuclear power plant or fossil plant  
5     owned by Midwest Generation?

6           A     If I thought the Commission got it wrong,  
7     then I wouldn't be taking the position I'm taking.

8           Q     Do you agree that the last time ComEd owned  
9     any generating plants was 2001?

10          A     Yes.

11          Q     And do you agree that the last year in  
12     which ComEd had significant production, operation,  
13     and maintenance or capital costs, not counting  
14     purchase power costs, were significant as defined as  
15     more than 2 percent of its costs was also 2001?

16          A     Well, if they -- yes, I think so. Yes,  
17     I'll accept that.

18          Q     Okay. And is it correct that you have not  
19     performed any analysis of ComEd's production-related  
20     payroll cost since 2000?

21          A     Yes.

22          Q     Now, in this case, is it correct that ComEd

1     used the direct assignment method to functionlize its  
2     general plant costs?

3             A     Yes.

4             Q     And did it also use that method for  
5     intangible plant costs?

6             A     Yes. I guess the one condition is their  
7     direct assignment method, my understanding is it  
8     includes both direct assignment and allocators. So  
9     it's not 100 percent direct assignment.

10            Q     And I don't know if you have in this case,  
11     but in some cases you refer to that as a hybrid  
12     method; is that right?

13            A     It sounds reasonable.

14            Q     Okay. And for administrative and general  
15     expenses, ComEd's used the general labor allocator?

16            A     In this case, yes.

17            Q     And Mr. Hill presented in his testimony  
18     discussion of how the direct assignment of general  
19     plant and intangible plant was performed and he  
20     presented supporting schedules and he presented work  
21     papers; is that right?

22            A     Yes.

1           Q     Okay.  And is it also correct that nowhere  
2     in your direct or rebuttal testimony do you identify  
3     any error in any of those schedules or work papers?

4           A     Well, the only error I do identify is with  
5     the general approach he takes.  But given the  
6     approach he takes, I did not identify any specific  
7     areas where there are errors.

8           Q     Now, is it correct in your direct testimony  
9     you criticized ComEd's approach because you refer to  
10    it as reversing the decision the Commission made in  
11    the last case on direct assignment versus using the  
12    general labor allocator for general and intangible  
13    plant?

14          A     Yes.

15          Q     Mr. Lazare, I just put in front of you a  
16    copy of ComEd's Data Request Staff No. 5.02.

17                   Do you recognize that?

18          A     Yes.

19          Q     Is this a data request that you answered?

20          A     Yes.

21          Q     Okay.  And would you agree that I don't  
22    think we want to read the whole thing, unless you



1     feel that's needed.

2                     But would you agree that in the final  
3     order of the Illinois Commerce Commission in ComEd's  
4     last rate case, the Commission expressly stated that  
5     its conclusion on the functionalization of general  
6     and intangible plant was quote "for purposes of this  
7     proceeding only and without" prejudice -- "without  
8     prejudging any issues that might arises in future  
9     cases concerning the allocation of general and  
10    intangible plant using other test years, the general  
11    labor allocator, proposed by staff should be approved  
12    in this docket"? Is that right?

13             A     Yes.

14             MR. RATNASWAMY: I think to get the entire  
15    language of the quote from the text, I will be  
16    marking this as ComEd Exhibit No. 4 and offer it.

17             JUDGE DOLAN: Did you do 3? Because I don't  
18    think you marked that other exhibit. You said you  
19    weren't going to.

20             MR. RATNASWAMY: We could call this 3, if that  
21    would be convenient for the parties and the judges.  
22    I had marked another one, which I thought Mr. Lazare

1 would recognize and had seen before, but he didn't,  
2 that's why I wasn't able to offer it. I'm happy to  
3 re-number this.

4 MR. FOSCO: Administratively, Judges, would it  
5 make sense because I think you asked all the parties  
6 to file updated exhibit lists. Maybe they could  
7 indicate Cross 3 was not used. It might be awkward  
8 to re-number especially if it's referred to in the  
9 early questions.

10 JUDGE DOLAN: That's fine. We'll just leave it  
11 then. We'll mark that as ComEd Cross-Exhibit 3.

12 MR. FOSCO: It just wasn't introduced or not  
13 moved for admission.

14 JUDGE DOLAN: I won't say redacted.

15 MR. RATNASWAMY: Pardon?

16 MR. FOSCO: You never moved for the admission  
17 of 3.

18 MR. RATNASWAMY: I couldn't establish the  
19 foundation for it with this witness.

20 MR. FOSCO: I have no objection to the exhibit.  
21 But I guess I would just note if there is going to be  
22 much of this, I think it's wasteful of time. The

1 Commission orders speak for themselves. I'm not sure  
2 we need to do this. I don't have an objection right  
3 now, but I guess I would just note that for the  
4 record.

5 (Whereupon, Commonwealth Edison  
6 Cross Exhibit No. 3 was marked  
7 for identification.)

8 JUDGE DOLAN: Okay.

9 BY MR. RATNASWAMY:

10 Q Would you agree, Mr. Lazare, that in the  
11 last ComEd rate case no witness presented any  
12 challenges to the details of ComEd's  
13 functionalization of general and intangible plant in  
14 that case either?

15 A I agree.

16 Q And would you agree that in the case now  
17 before us, you are giving no opinion on whether the  
18 general labor allocator should or should not be used  
19 for all of ComEd's general plant?

20 A I would agree.

21 Q And the same is true for the intangible  
22 plant, as well?

1           A     I would agree.

2           Q     And is the same true, i.e., you are giving  
3     no opinion about whether the general labor allocator  
4     should or should not be use to functionlize  
5     administrative and general expenses?

6           A     When it comes to A&G expense, I'm not -- my  
7     proposal to cap or for no increase in A&G expense  
8     supersedes any issue of functionalization.

9                     It's simply a statement that for  
10    distribution function, the level going forward should  
11    be the same as was approved in the last rate case.

12          Q     Would you agree, perhaps reluctantly, but  
13    would you agree that you testified several times on  
14    how to functionlize general plants and intangible  
15    plants and A&G expenses?

16          A     Yes.

17          Q     And do you recall Docket 98-0680?

18          A     Yes.

19          Q     And was that a docket which the Commission  
20    initiated before each of the Illinois Electric  
21    Utilities first round of delivery services rate  
22    cases?

1           A     Yes.

2           Q     And there were workshops. Then there was  
3 testimony filed?

4           A     Yes.

5           Q     Okay. There were no particular revenue  
6 requirements proposals in that docket, though, right?

7           A     No.

8           Q     Okay. I know how that's going to read in  
9 the transcript.

10                         Were there particular revenue  
11 requirement proposals in that case?

12          A     No.

13          Q     Okay. Was any particular Form 1 data  
14 presented for any of the utilities in that case?

15          A     Seeing how it was seven years ago, I can't  
16 speak for all of the evidence provided in that case.  
17 So I can't answer on that one.

18          Q     Okay. Is it true that you testified in  
19 your testimony at some length about when direct  
20 assignments should be used versus general allocators?

21          A     Yes.

22          Q     Okay. Your direct testimony was 41 pages

1 or I'm sorry -- 38 pages on that and other subjects?

2 A I think it's 41, at least on the copy I  
3 have here.

4 Q Okay. Now, in brief, is it fair to say  
5 that as to general plant and intangible plant what  
6 you supported was the hybrid method, by which I mean  
7 a mixture, you do direct assignment if there is  
8 enough evidence for it, otherwise, you use general  
9 allocators?

10 A Yes, in that very ancient case, I supported  
11 the hybrid method.

12 Q Okay. And, again, in brief, it's fair to  
13 say that for administrative and general expenses, you  
14 proposed different allocators for different accounts?

15 A Yes.

16 Q You testified, again, on this subject in  
17 ComEd's, this particular subject, again in ComEd's  
18 first delivery services rate case, right?

19 A Yes.

20 Q Can you see this from there?

21 A Yes.

22 Q Is it okay if I use H for hybrid method?

1           A     Yes.

2           Q     For general plant and hybrid for intangible  
3     plant and then -- I don't have a handy acronym, a  
4     mixture for allocators for A&G; is that fair?

5           A     Yes.

6           Q     Okay. When you testified in Docket 99-0117  
7     on the subject of general plant, would you agree that  
8     you supported the direct assignment that had been  
9     presented by ComEd?

10          A     The hybrid, yes.

11          Q     And the intangible plant, did you support  
12     it, as well?

13          A     Well, in that case there is virtually 80  
14     thousand in intangible plant so there wasn't an issue  
15     in the case.

16          Q     So when in the 1997 test year ComEd still  
17     owned all those plants, it only had \$80,000 of  
18     intangible plant?

19          A     Yes, or maybe 82,000.

20          Q     You do have a good memory.

21                     And on administrative and general  
22     expenses, you did not propose a mixture of

1 allocators. You proposed just one, right, the  
2 general labor allocator?

3 A No. I proposed a mixture of allocators.

4 My only quarrel is with your H on the  
5 99-0117 IP. As I said, it was not an issue in the  
6 case because of the size.

7 Q All right. Would you agree that in that  
8 case the Staff proposed adjustments that were smaller  
9 than that?

10 A Yes. But I think my testimony was a  
11 limited discussion to the general plant.

12 Q But did Mr. Hendrickson also testify?

13 A Yes.

14 Q And didn't Mr. Henderson support the direct  
15 assignment of intangible plant?

16 A That, I don't know.

17 Q Okay. The last ComEd rate case skipped the  
18 unbundling docket.

19 You did not support the hybrid method?

20 A No.

21 Q Okay.

22 A General allocator for --



1           Q     In that case, you supported the general  
2     labor allocator for the general plant?

3           A     The intangible plant and A&G.

4           Q     Okay. Now, in this case, you're not  
5     presenting any opinion on any of that. You are  
6     proposing the adjustment based on the last case?

7           A     Yes. The utility, as it exists today is  
8     quite different from the utility that exists in those  
9     three cases.

10                     The calculations that I wish to  
11     perform that I performed in the previous incarnation  
12     of the utility are no longer possible for just a T&D  
13     utility which ComEd is now.

14           Q     Would you agree that one of the general  
15     plant accounts is, and you referred to this earlier,  
16     is account, I think you mentioned, the one on  
17     transportation. You may not have given the number,  
18     it's Account 392? Is that right?

19           A     It sounds right. Could you just give me  
20     the title of it.

21           Q     Sure. Transportation equipment.

22           A     It sounds familiar.

1           Q     Okay.  Have you performed any analysis to  
2     determine whether there is any, even one vehicle  
3     owned by ComEd that is not being used to support the  
4     delivery services function?

5           A     I have not examined that account  
6     specifically.

7           Q     Okay.  You didn't examine any of the  
8     accounts specifically, did you?

9           A     Correct.

10          Q     And that's true both of the general plant  
11     accounts and the intangible plant accounts?

12          A     Correct.

13          Q     Did you review Mr. Hill's work paper on the  
14     direct assignment of general and intangible plant?

15          A     Yes.

16          Q     Do you have a copy of it?

17          A     Not before me.

18          Q     Do you recognize this document, which is  
19     part of ComEd Exhibit 5.2, which is one of the  
20     attachments to Mr. Hill's direct testimony?

21          A     Yes.

22          Q     If you could go, for example, to Page 9 of

1     that document, would you agree that that documents  
2     indicates that ComEd has a somewhat more than half a  
3     billion dollars in terms of gross plant and  
4     intangible plant?

5             A     Yes.

6             Q     Okay. And would you agree that all but a  
7     little less than \$6 million of that is in six  
8     specific software systems?

9             A     Say that again. Could you ask that one  
10    more time.

11            Q     Sure. Except for the miscellaneous line,  
12    which is a little less than \$6 million, would you  
13    agree that all the other amounts are associated with  
14    six specific software systems?

15            A     Yes.

16            Q     And would you agree that not only Mr. Hill,  
17    but some other ComEd witnesses as well, such as  
18    Mr. DiCampli and Mr. Costello discuss how these  
19    software systems are used?

20            A     Yes.

21            Q     Okay. And would you also agree that  
22    neither you nor any other witness has claimed that

1 the testimony about how these software systems is  
2 used is incorrect?

3 A I have not. I would agree.

4 Q You indicated earlier that your proposed  
5 adjustment is not divided between general plant and  
6 intangible plant; is that right? Is that right?

7 A It's a cumulative adjustment generally,  
8 yes.

9 Q So would you agree that that means that  
10 ComEd, if your proposal is accepted, will not be  
11 allowed to include in rate base a substantial amount  
12 of the costs of these software systems?

13 MR. FOSCO: Are you representing to the witness  
14 that these amounts are the same amounts that were  
15 included in the last rate case?

16 MR. RATNASWAMY: No. Some of them are some of  
17 them aren't. But I'm not making a representation of  
18 it either way.

19 THE WITNESS: My testimony would be that a  
20 certain share of significant share of intangible  
21 costs, some of which the company includes here in  
22 their calculation, would not be included in the

1 revenue requirement.

2 BY MR. RATNASWAMY:

3 Q Okay. If you go back to Page 2 of this  
4 document. Would you agree that this shows in terms  
5 of gross amounts that ComEd has more than  
6 \$1.1 billion of general plant?

7 A Yes.

8 Q Okay. And would you agree that the largest  
9 single account, is Account 397, the one with  
10 communications equipment?

11 A Yes.

12 Q Okay. Would you also agree that a large  
13 amount of the dollars in that account is SCADA  
14 equipment?

15 A I don't have a specific break down of that  
16 account total. So I can't really say specifically  
17 how much of it is SCADA equipment.

18 Q Okay. Would you believe some of it is?

19 A Some of that account, yeah, that's my  
20 understanding.

21 Q Okay. Did you review ComEd's Schedule F4,  
22 which shows the largest addition of rate base?

1           A     I'm sorry?

2           Q     Did you review ComEd's Schedule F4, which  
3 shows the largest additions to rate base?

4           A     Since the last time?

5           Q     In this case.

6           A     Additions to rate base since the last case?

7           Q     Oh, yes. Since the last case, I'm sorry?

8           A     No.

9           Q     Let me ask you this hypothetical again.  
10                    Would you agree that if, in fact, a  
11 large amount of the costs in Account 397 are for  
12 SCADA equipment, the effect of your proposal is to  
13 deny ComEd the recovery of capital investments it  
14 made for equipment that it uses to identify and  
15 shorten distribution outages?

16          A     Is this -- are you talking about SCADA  
17 equipment investments since the last rate case?

18          Q     Both actually.

19          A     Well, for the -- did you review ComEd's  
20 Schedule F4, which shows SCADA equipment investments  
21 since the last rate case, they would be unaffected by  
22 my adjustment because my adjustment focuses solely on

1 test year 2000 general and intangible plant.

2 All additions to general plant or  
3 intangible plant since the last rate case would not  
4 be subject to my adjustment.

5 Q So would you agree, though, that when the  
6 administrative law judges are making a recommendation  
7 on this issue when the Commission is making a  
8 decision on this issue, they're going to have to  
9 weigh on the one side, the testimony of multiple  
10 witnesses about what these costs are for and how they  
11 support delivery services versus the order in the  
12 last case, a case in which you admit no witness  
13 presented analysis of those costs?

14 MR. FOSCO: I'm going to object as  
15 argumentative. I'm not sure that's a question to the  
16 witness about his testimony.

17 MR. RATNASWAMY: Well, I think it is because he  
18 expressly testifies in both his direct and his  
19 rebuttal that ComEd, in his opinion, has the burden  
20 to show why it is appropriate to 'quote' reverse the  
21 decision in the last case.

22 JUDGE DOLAN: Well, for what it's worth, I'll

1 let him answer.

2 THE WITNESS: This decision was already made by  
3 the Commission in its last case based upon the  
4 evidence in that case in which it found with respect  
5 to each of these accounts and all the intangible  
6 plant accounts that there are sufficient amounts of  
7 general and intangible plant associated with the 2000  
8 test year for the distribution utility for ComEd.

9 So, in essence, this is a decision  
10 that's already been made by the Commission.

11 And really what's on the table now is  
12 should that decision based upon all the evidence for  
13 the 2000 test year, four years later, now be reversed  
14 by the Commission in this case.

15 BY MR. RATNASWAMY:

16 Q This is my only copy of one of the work  
17 papers from the last case. It is work papers  
18 supporting the general, intangible plant direct  
19 comments from ComEd and presented by Mr. Hill.

20 Let me ask you first if you recognize  
21 it?

22 A To be honest, since this case occurred



1 four years ago, I don't remember the specific context  
2 in which each of these numbers were developed. So  
3 they would take some kind of refreshing of the  
4 testimony and perhaps other evidence in the case for  
5 me to sort of get a handle on what each of these  
6 numbers represent.

7 Q Okay. Let me ask you about one particular  
8 item in there then.

9 On Page 8 in the last case, isn't it  
10 correct, that ComEd's intangible plant costs included  
11 \$83 million for the CIMS System; C-I-M-S?

12 A Now you are talking about this is from  
13 ComEd's filing in that case?

14 Q Yes, it's testimony in that case.

15 A So the ComEd filing included 83.7 million  
16 for CIMS. That appears to be the case.

17 Q Okay. And isn't it correct that you have  
18 acknowledged in this case that you were not familiar  
19 with CIMS in discovery?

20 A Yes.

21 Q Okay. But isn't it also the case that  
22 ComEd has presented the testimony of witnesses about

1     what customer information and management system does?

2             A     Yes.

3             Q     And that it's used to perform billing and  
4     to keep track of customer information?

5             A     Yes.

6             Q     Okay.  If they're right, isn't that  
7     delivery service?

8             A     I'm not familiar enough with CIMS to know  
9     exactly if that's the sole purpose of CIMS, as well  
10    as, other purposes, as well.  I'm just not familiar  
11    with it.

12            Q     Okay.  If the evidence is that it doesn't  
13    serve other purposes, then would you accept that  
14    that's delivery services that it's being used to  
15    perform?

16            MR. FOSCO:  I'm going to object to the  
17    question.  There is not a follow-up question to  
18    accepting that.  The evidence will speak for itself.

19            JUDGE DOLAN:  Can you repeat the question  
20    please.

21            MR. RATNASWAMY:  I'm asking Mr. Lazare that if  
22    he agrees that if ComEd's testimony about how this

1 information system is used is correct, that it is  
2 part of its delivery services?

3 MR. FOSCO: Well, he's already testified that  
4 he doesn't have specific knowledge to form that  
5 opinion. So it's asked and answered.

6 JUDGE DOLAN: All right. I'll sustain the  
7 objection.

8 BY MR. RATNASWAMY:

9 Q Did the Commission rule in Docket 99-0013  
10 that a substantial proportion tens of millions of  
11 dollars of CIMS costs were being used to provide  
12 metering services?

13 A Do you have a reference to a data request?

14 Q I have to check on them.

15 A I'm not familiar with the ruling. If you  
16 could point out where the Commission states that in  
17 its order, it would be helpful.

18 Q I will withdraw that question.

19 Let me ask you this as a hypothetical  
20 then.

21 If the Commission ruled that way in  
22 Docket 99-0013, then aren't you the one who is

1     proposing to reverse the Commission order?

2             A     No, I would disagree because if you look at  
3     the work paper that you provided me, which identifies  
4     83.773 million dollars in CIMS costs from the  
5     Company's last case, well, in that case the  
6     Commission allocated more than 60 percent of both  
7     general and intangible plant to production at the  
8     time the Company did production.

9                     So as a result, it would be reasonable  
10    to assume that not all of this 83.773 million dollars  
11    was necessarily allocated by the Commission to the  
12    distribution function. And this is a case subsequent  
13    to 99-0013.

14                    So I still think this would make my  
15    position consistent with the Commission's most recent  
16    ruling on this issue.

17             MR. FOSCO: I'm sorry. Maybe to clarify.

18                     Did you mean 0013 or 0017?

19             THE WITNESS: 0013 I think.

20             MR. FOSCO: I'm sorry.

21             MR. RATNASWAMY: Did I say it wrong.

22             MR. HILL: No, you said 03.

1           MR. FOSCO: I apologize.

2       BY MR. RATNASWAMY:

3           Q     Would you agree that in Docket 99-0117,  
4     you, yourself, proposed rate design decisions that  
5     were directly contrary to prior Commission orders?

6           A     Yes.

7           Q     And you won?

8           A     Some things.

9           Q     And that also happened in the unbundling  
10    docket?

11          A     Yes.

12          Q     And, in fact, you wrote an article where  
13    you talked about the Commission breaking with the law  
14    in tradition in the unbundling docket?

15          A     Yes.

16          Q     Do you agree that if the evidence warrants  
17    it, the Commission should make a different decision  
18    in this case than it made in past cases?

19          A     Yes.

20          Q     If I could direct your attention back,  
21    believe it or not, to your direct testimony,  
22    Line 631. I'm sorry the sentence starts on 630?

1           A     Yes.

2           Q     You state there: "Now, two-and-a-half  
3     years later the Company's proposed functionalization  
4     method raises A&G expenses by another 97 million."  
5                     Do you see that?

6           A     Yes.

7           Q     Would you agree that the test years are  
8     four years apart in the two cases?

9           A     Yes. I was referring to when the  
10    Commission order was written.

11          Q     Okay. But isn't the relevant comparison  
12    the test year?

13          A     Yes.

14          Q     Have you presented -- I'll withdraw that.

15          MR. RATNASWAMY: Thank you, Mr. Lazare.

16                     I have no further questions.

17          JUDGE DOLAN: Any redirect?

18          MR. FOSCO: Can we have just a few seconds?

19          JUDGE DOLAN: Yeah. Off the record.

20                     (Whereupon, a discussion was had  
21                     off the record.)  
22                     ( Change of reporter )

1 JUDGE DOLAN: Mr. Jolly, do you have your  
2 witness?

3 MR. JOLLY: Yes. The City calls Steve Walter.

4 JUDGE DOLAN: Mr. Walter, raise your right  
5 hand.

6 (Witness sworn.)

7 JUDGE DOLAN: Okay. Proceed.

8 STEVEN WALTER,  
9 called as a witness herein, having been first duly  
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY

13 MR. JOLLY:

14 Q Please state your name for the record.

15 A Steven Walter.

16 Q By whom are you employed?

17 A The City of Chicago.

18 Q And what's your business address?

19 A 30 North LaSalle, Suite 3700, Chicago,  
20 Illinois 60602.

21 Q Do you have in front of you what's been  
22 marked for identification in this case as City

1 Exhibit 1.0, the direct testimony of Steven Walter?

2 A Yes.

3 Q And is this the direct testimony you  
4 prepared or had prepared for you for submission in  
5 this proceeding?

6 A Yes.

7 Q Are there any changes, modifications that  
8 you'd like to make to your direct testimony at this  
9 time?

10 A No.

11 Q Do you also have in front of you what's  
12 been marked for identification in this case as City  
13 Exhibit 2.0, the rebuttal testimony of Steven Walter?

14 A Yes.

15 Q And was that exhibit prepared by you or at  
16 your direction?

17 A Yes.

18 Q Are there any changes or modifications  
19 you'd like to make to that testimony at this time?

20 A No.

21 Q If I were to ask you the questions that are  
22 set forth in City Exhibit 1.0 today, would your





1 with Exelon Business Services Corporation appearing  
2 on behalf of ComEd.

3 JUDGE DOLAN: Okay.

4 CROSS EXAMINATION

5 BY

6 MR. BERNSTEIN:

7 Q Good afternoon, Mr. Walter.

8 A Good afternoon.

9 Q I want to talk to you first for a few  
10 moments regarding Rider 28 and its proposed successor  
11 Rider LGC.

12 Rider 28 and Rider LGC provide for the  
13 localization of the incremental costs providing  
14 nonstandard services required by a local government  
15 such as the City of Chicago; would you agree?

16 A That's correct.

17 Q Rider 28 has a history that dates back to  
18 1991 when it was first filed with the Commission. Do  
19 you recall that?

20 A I wasn't in Illinois at the time. I know  
21 the history of it, yes. But I wasn't here for the  
22 beginnings.

1           Q     Absent Rider 28 or something like it, under  
2     traditional ratemaking, the costs of the services  
3     covered by Rider 28 would be spread across all of the  
4     utility's customers; correct?

5           A     That's correct.

6           Q     Rider 28, on the other hand, provides for a  
7     departure from that traditional ratemaking treatment  
8     and localizes the costs; correct?

9           A     That's correct.

10          Q     Localized in this sense means that the  
11     costs are imposed or are recovered from customers  
12     located in the boundaries of the governmental entity  
13     that requires ComEd to incur the costs?

14          A     That's correct.

15          Q     In this case, the City of Chicago is a  
16     governmental entity. If costs were localized under  
17     Rider 28 with respect to a project in the City of  
18     Chicago, then the costs would be recovered not from  
19     ComEd customers throughout its service territory, but  
20     solely from customers who take service within the  
21     city of Chicago?

22          A     That's correct.

1           Q     Please, help me understand your position  
2     with regard to Rider 28 and Rider LGC.

3                     Is it the contention of the City of  
4     Chicago that the provisions of Rider 28 -- I'm sorry,  
5     Rider LGC localizing the incremental costs of certain  
6     projects may never be applied to the costs of a  
7     project undertaken in Chicago?

8           A     No, that's not my contention.

9           Q     It may be applied in certain circumstances?

10          A     That's correct.

11          Q     In what circumstances would Rider LGC call  
12     for the localization of incremental costs of certain  
13     projects that would be inconsistent with the  
14     franchise agreement between ComEd and Chicago?

15                 MR. JOLLY: I may interpose -- well, I will  
16     interpose an objection here. I think Mr. Walter  
17     testified about this in his rebuttal testimony  
18     regarding a provision in the City's franchise  
19     agreement that provides for ComEd to remove at its  
20     expense utility facilities that the City asks be  
21     moved for particular public purposes.

22                     And it's the City's legal position

1     that Rider LGC cannot interfere with the contract  
2     between the City and ComEd.  So to the extent you're  
3     asking him for a legal opinion, I object to the  
4     question.

5             MR. BERNSTEIN:  I'm not asking him for a legal  
6     opinion.  I'm asking him to -- he has told us in his  
7     testimony that, in certain circumstances, application  
8     of the rider would conflict with the ordinance.

9                     I'm asking him to explain what those  
10    circumstances may be so that the Commission can  
11    consider whether it would want to revise or alter the  
12    rider to avoid that kind of conflict.  I'm not asking  
13    for a legal opinion.

14            MR. JOLLY:  I guess I would point to, again,  
15    Page 8 of Mr. Walter's testimony where he  
16    specifically says, at Lines 135, when discussing this  
17    very issue, he says, My lawyers have advised me --  
18    and he goes on to describe essentially what I just  
19    stated.

20                    And so, again, I think asking Mr.  
21    Walter to interpret what the requirements are of the  
22    contract and how they interplay with Rider LGC may be

1 asking for a legal opinion.

2 MR. BERNSTEIN: Well, I'd be willing to  
3 withdraw that entire paragraph. But if it's not  
4 withdrawn, I'd point out to you at Lines 141 and 142,  
5 the witness says, The rider should be modified to  
6 respect ComEd's contractual commitments to local  
7 governmental units with which it has such agreements.

8 I'm simply testing that one sentence.  
9 I'm asking him in what respect should the rider be  
10 modified. That is to say in what situation does he  
11 think that it's in conflict.

12 JUDGE DOLAN: As to that extent, you can answer  
13 the question.

14 THE WITNESS: It's a hypothetical. I could  
15 think of certain circumstances where we would want  
16 Edison to relocate its wires, maybe even a  
17 substation, if the City is undertaking, let's say,  
18 expansion of O'Hare.

19 We've done that before. We asked them  
20 to move a substation and they did. They tried to put  
21 it under Rider 28, but then we came to an agreement  
22 that it wouldn't go under Rider 28.

1 BY MR. BERNSTEIN:

2 Q And ComEd agreed with that?

3 A Yes, as a franchise of that.

4 Q Has ComEd ever actually invoked Rider 28 to  
5 localize the costs of a project in the city that  
6 involved removing facilities from a public entity?

7 A I can't think of any situations where they  
8 did.

9 Q Let's move on to Rider ECR, Environmental  
10 Cost Recovery Adjustment.

11 Both your direct and your rebuttal  
12 testimony address Rider ECR; correct?

13 A Yes.

14 Q Would it be fair to say that Rider ECR  
15 provides for the recovery of certain environmental  
16 cleanup costs called incremental environmental costs  
17 in the language of the rider?

18 A That's correct.

19 Q And these costs include what the parties in  
20 their testimony have referred to as MGP costs and  
21 non-MGP costs?

22 A That's correct.

1           Q     All right.  If you will bear with me, I'm  
2     going to ask you a series of questions to try to make  
3     clear just what these terms mean.

4                     Let's start with MGP costs.  That's  
5     the capital letters M, G, and P.

6                     In the late 18000s and the first half  
7     of the 20th century, manufactured gas plants were  
8     operated in Illinois to produce gas from coal; isn't  
9     that right?

10           A     That's correct.

11           Q     While none of us were around back in those  
12     days, it's our understanding that the manufactured  
13     gas process produced waste products, including coal  
14     tar; correct?

15           A     That's correct.

16           Q     Under environmental laws enacted in the  
17     second half of the 20th century, certain gas and  
18     electric companies, including ComEd, may be required  
19     to remediate -- a term that's used by our  
20     environmental lawyers a bit too much -- or cleanup  
21     maybe a more common term -- the sites of those former  
22     plants, especially the wastes and residues from the



1       manufactured gas process; right?

2               A       That's correct.

3               Q       MGP, as has been used in this testimony,  
4       refers to manufactured gas plants and to the plants  
5       we've just been describing; correct?

6               A       That's correct.

7               Q       Under the environmental laws, a business  
8       may be required to clean up or pay for the cleanup of  
9       a site even if a company today does not own the site  
10      that was formerly the location of the MGP plant;  
11      isn't that right?

12              A       That's correct.

13              Q       Indeed, it may be called upon under the  
14      environmental laws to clean up or pay for the cleanup  
15      of a site even if the company never operated the  
16      plant formerly located on the site; isn't that right?

17              A       I believe that's correct.

18              Q       Now, under traditional ratemaking concepts,  
19      a utility is generally entitled to recover in its  
20      rates prudently incurred operating costs; isn't that  
21      right?

22              A       Yes.

1           Q     In the early 1990s, this Commission  
2     considered whether Illinois electric and gas  
3     utilities required to incur costs in connection with  
4     the cleanup of former manufactured gas plants would  
5     be allowed to recover those costs in rates; right?

6           A     I'm not exactly sure of the year, but early  
7     '90 sounds right.

8           Q     And this Commission concluded that the  
9     utilities should be allowed to recover their MGP  
10    cleanup costs in rates; right?

11          A     That's correct.

12          Q     The Commission also considered at that time  
13    whether recovery of MGP cleanup costs in rates should  
14    occur in base rates or through a rider; isn't that  
15    right?

16          A     I didn't read the order. I don't know.

17          Q     At Page 4 of your rebuttal testimony,  
18    beginning at Line 61, you twice refer to the  
19    Commission's coal tar order. What order are you  
20    referring to?

21               MR. JOLLY: If Mr. Bernstein wishes, the City  
22    will stipulate that in its orders in that case the

1 Commission allowed rider recovery of MGP costs.

2 MR. BERNSTEIN: I'm going to continue to ask  
3 the witness a series of questions. And I'm going to  
4 need the witness to have some understanding that the  
5 Commission considered two kinds of rate recovery in  
6 that order. It considered rider recovery and it  
7 considered base rate recovery.

8 MR. JOLLY: And the witness stated he is not  
9 familiar with the order.

10 MR. BERNSTEIN: And that's why I'm asking him  
11 what order he is referring to that he's testifying  
12 about on Page 4. Is it the same order?

13 MR. JOLLY: I think what he is responding to is  
14 Mr. Crumrine's testimony regarding that order.

15 MR. BERNSTEIN: Your Honor, I object to Mr.  
16 Jolly virtually coaching the witness at this point.  
17 The witness is the one who sponsored the testimony.  
18 I don't even hear an objection being made, but he is  
19 speaking for the witness at this point.

20 MR. JOLLY: I was offering a stipulation to try  
21 and speed this up because Mr. Walter said he is not  
22 familiar with the testimony or with the order.

1           MR. BERNSTEIN: I move to strike the provision  
2 of the testimony. He's specifically referred to it  
3 in his testimony.

4 BY MR. BERNSTEIN:

5           Q     Mr. Walter, is it your testimony that  
6 you're not familiar with what's referred to in your  
7 testimony as the Commission's coal tar order?

8           A     No, that's not my contention. I said I  
9 didn't read the order, so I wasn't aware that they  
10 had looked at both rate base recovery and rider  
11 recovery.

12          Q     Did you write this sentence in your  
13 testimony that you've sworn to?

14          A     Did I write it? Yes.

15          Q     You refer to an order you hadn't read?

16          A     After discussing things with counsel, yes.

17          Q     The next sentence, it says, The  
18 Commission's coal tar order was based on a record  
19 developed over more than a year. Was that your  
20 writing or was that counsel's writing?

21          A     It's my writing. It was based on  
22 discussions with counsel.

1           Q     But you don't really know whether that  
2     statement is true or correct beyond what counsel told  
3     you, you haven't read the order?

4           A     I haven't read the order; I said so.

5           Q     Are you familiar with the difference  
6     between base rate recovery and rider recovery?

7           A     Yes, I am.

8           Q     Are you aware of any order of the  
9     Commission in which the Commission addressed the  
10    differences and compared the advantages and  
11    disadvantages of rider recovery versus base rate  
12    recovery?

13          A     Yes, I am.

14          Q     What order is that?

15          A     I testified in Rider CB in front of the  
16    Commission, and I've reviewed other riders over the  
17    years.

18          Q     So you're familiar with the differences  
19    between base rate recovery and rider recovery?

20          A     Yes.

21          Q     All right. You just don't know whether the  
22    Commission actually discussed it in its coal tar

1 order?

2 A That's what I said, yes.

3 Q And you're not aware of the language in the  
4 Commission's coal tar order where the Commission  
5 approved both rate base recovery -- I'm sorry, base  
6 rate recovery and rider recovery and expressed a  
7 preference for one of those?

8 A I said I didn't read the order. And I  
9 would imagine that that would be the case because  
10 Edison decided to recover MGP costs through its base  
11 rates after that case and other several utilities  
12 decided to recover their costs through riders. So I  
13 imagine the Commission allowed them, yes.

14 Q Let's talk a little bit about the  
15 difference between base rate recovery and rider  
16 recovery.

17 Base rate recovery means inclusion or  
18 recognition of the costs of an expense in test year  
19 operating expenses in a rate case proceeding like  
20 this one; correct?

21 A Yes.

22 Q A rider, on the other hand, works somewhat

1       differently, doesn't it?

2               A       Yes.

3               Q       In the context of environmental costs that  
4       are the subject of Rider ECR, would it be fair to say  
5       that a rider operates something in the nature of a  
6       formula rate in that it provides for the recovery of  
7       actual costs incurred sometime in the future as  
8       opposed to test year costs?

9               A       That would be a good characterization of  
10      it, yes.

11              Q       And, generally, a rider -- and particularly  
12      Rider ECR -- and the other riders similar to ECR that  
13      have been approved for other Illinois utilities  
14      generally use a reconciliation mechanism to match  
15      recovery of revenue with actual costs incurred; isn't  
16      that right?

17              A       I do want to take issue with one part of  
18      that. The second part of it, the formula part of it  
19      was correct. The proposed Rider ECR is not like the  
20      other utilities MGP cost riders, though. The other  
21      utilities do not include non-MGP costs within their  
22      rider.

1           Q     I don't believe I used the term "MGP  
2     costs."

3                     But focusing on the mechanism for  
4     reconciliation and a prudence review, it's like the  
5     riders that the others have used --

6           A     Yes.

7           Q     -- and the Commission has approved  
8     elsewhere?

9           A     Yes.

10          Q     Now, the rates approved in this delivery  
11     service case, the one you're testifying in, will  
12     first apply for service provided in and after  
13     January of 2007; right?

14          A     That's correct.

15          Q     And, presumably, unless the Commission  
16     orders otherwise, those rates will continue to apply  
17     to service provided in years after 2007; right?

18          A     Yes.

19          Q     With base rate recovery of environmental  
20     costs, the amount recoverable in rates in 2007 for  
21     environmental cleanup costs will equal the cleanup  
22     costs incurred in 2007 to the extent that the test



1 year provision approved in this case proves to be an  
2 accurate forecast of actual 2007 expenses; isn't that  
3 right?

4 A Yes.

5 Q May be too high, may be too low. It's  
6 right on the mark only to the extent that it's  
7 exactly right?

8 A That's the effect of the test year, yes.

9 Q Right. And, of course, the same is true  
10 for 2008 or any succeeding year which the rates would  
11 remain in effect; isn't that right?

12 A That's correct.

13 Q The amounts recoverable in rates in 2008  
14 for 2008 cleanup costs will equal the cleanup costs  
15 actually incurred in 2008 so long as the test year  
16 provision approved in this case turns out to be an  
17 accurate forecast of 2008 actual costs; right?

18 A Yes.

19 Q Now, for costs -- strike that.

20 To the extent that costs turn out to  
21 vary from the forecast amount, a rider mechanism is  
22 more likely to provide an accurate match in any

1 particular year between actual costs incurred in that  
2 year in the future and in the actual recoveries in  
3 that year; isn't that right?

4 A Yes.

5 Q I mean, that's sort of inherent in the  
6 definition of a "rider" that we talked about?

7 A That's what I was going to say.

8 Q Proving itself, if you will, by its own  
9 definition?

10 A Right.

11 Q Now, you are aware, I take it, that the  
12 Commission -- this Commission has allowed recovery of  
13 environmental cleanup costs, i.e., specifically coal  
14 tar costs -- strike that, MGP cleanup costs --

15 A Yes.

16 Q -- through a rider?

17 A Through a rider.

18 Q And also through base rates?

19 A Yes.

20 Q It's allowed both?

21 A Yes.

22 Q Not necessarily at the same time for the

1 same company?

2 A Yes.

3 Q But in different orders, it's approved each  
4 of those mechanisms?

5 A Yes.

6 Q What is your understanding with regard to  
7 the coal tar order that you've referred to and we  
8 talked about a few moments ago in terms of the  
9 Commission expressing a preference in that order as  
10 between rider recovery and base rate recovery for MGP  
11 cleanup costs?

12 A I don't know.

13 Q You don't know. Okay. Now, we've been  
14 talking about MGP cleanup costs. I want to move on  
15 now to the other category of costs that we've been  
16 alluding to but haven't really spoken of directly,  
17 what, for lack of a better term, we've referred to as  
18 non-MGP costs.

19 The same environmental laws that apply  
20 to the cleanup of manufactured gas plant sites also  
21 apply to the cleanup of contamination produced in  
22 operations and its sites that have nothing to do with

1 the manufacture of coal gas; isn't that right?

2 A Yes.

3 Q So in the same way that companies may be  
4 required to incur costs for the cleanup of wastes  
5 from former MGP sites, they may become responsible  
6 for and incur cleanup costs for sites that were never  
7 used for the production of coal gas; is that right?

8 A That's correct.

9 Q And that's what we refer to as non-MGP  
10 costs; correct?

11 A Correct.

12 Q Actually, the environmental laws are rather  
13 neutral in this regard, aren't they? They don't  
14 really, on their face, purport to apply differently  
15 to MGP sites and non-MGP sites, they just refer to  
16 contamination and cleanups and responsibility of  
17 companies generally, don't they? You're not sure?

18 A No. No, I'm not sure.

19 Q At any rate, you in your testimony have  
20 distinguished MGP and non-MGP costs. The company  
21 has, of course, distinguished MGP and non-MGP costs  
22 at times. The chart that you're looking at

1 distinguishes MGP and non-MGP costs because MGP costs  
2 were the subject of a particular consideration by  
3 this Commission back in the '90s; isn't that right?

4 A That's correct.

5 Q Now, as we have said, ComEd has proposed  
6 Rider ECR in this case which, if approved, would  
7 provide for recovery of ComEd's environmental cleanup  
8 costs, MGP and non-MGP; correct?

9 A That's correct.

10 Q Alternatively, ComEd has presented  
11 information showing the test year environmental  
12 cleanup costs that it would propose be included in  
13 test year operating expenses in this case in the  
14 event the Commission were to decide against rider  
15 recovery of those costs; is that right?

16 A Yes.

17 Q Okay. Now we've kind of laid out what the  
18 options are. I'm trying to understand -- I  
19 appreciate if you'll help me understand where you  
20 come down on these options.

21 Do you oppose ComEd's recovery --  
22 strike that. Let me preface it this way.

1                   Putting aside for the moment the  
2   question of the mechanism for rate recovery, that is  
3   to say rider versus base rates, do you oppose ComEd's  
4   recovery through rates of environmental cleanup costs  
5   to its customers?

6           A     No.

7           Q     All right. Now, let's focus then on MGP  
8   costs, the category of costs that the Commission has  
9   had a fairly lengthy history dealing with.

10                   You have not opposed, as I understand  
11   it, ComEd's recovery through rates of environmental  
12   cleanup costs arising from former MGP sites; is that  
13   right?

14          A     That's correct.

15          Q     Now, I do want to draw a distinction  
16   between base rate and rider recovery.

17                   Do you oppose recovery of ComEd's MGP  
18   cleanup costs through base rates?

19          A     No.

20          Q     Okay. Do you oppose ComEd's recovery  
21   through base rates of its non-MGP costs?

22          A     Do I oppose? No, that's what we're

1 suggesting.

2 Q Base rate recovery?

3 A Base rate.

4 Q Now, if you will look at a moment this  
5 poster board that appears behind me. This is an  
6 enlargement, if you will, of ComEd Exhibit 44,  
7 Attachment 1 to the surrebuttal testimony of  
8 Messrs. Fernandes and McCauley on behalf of ComEd.  
9 Have you examined that surrebuttal testimony?

10 A Yes.

11 Q And so you've seen this graphic display  
12 before, although in a slightly smaller and perhaps  
13 even black and white form?

14 A Yes, I have.

15 Q I'm going to simply refer to this as  
16 Attachment 1 for purposes of the next series of  
17 questions.

18 Attachment 1 graphically depicts  
19 ComEd's actual MGP and non-MGP cleanup costs for  
20 four years, the years 2001 through year 2004. Is  
21 that your understanding?

22 A Yes, it is.

1           Q     Are you aware of what is commonly referred  
2     to as the rate freeze provisions of a customer choice  
3     law of 1997?

4           A     Yes.

5           Q     In your rebuttal testimony at Page 3,  
6     specifically Lines 38 through 40, you ask yourself,  
7     Question, Why did it take ComEd until now to propose  
8     that those costs be recovered through a rider?

9                     Do you see where I'm referring? I'm  
10    not referring to a Q. I'm referring to the question  
11    that you posed, I guess, somewhat rhetorically in the  
12    context of your answer appearing in those lines.

13                    Do you see where I'm referring?

14          A     I do.

15          Q     Your response to the question, you  
16    addressed to yourself in the very next sentence,  
17    suggests an inference that ComEd's costs may not be  
18    as volatile or as unpredictable as ComEd claims.

19                    Did you have the data shown on  
20    Attachment 1 in mind when you made that inference?

21          A     No. It was written before I saw the  
22    surrebuttal.



1           Q     Did you have the rate freeze in mind?

2           A     The rate freeze is always in my mind.   So I  
3 would say it was part of my testimony, yes.

4           Q     Do you think it's at least equally  
5 plausible that the rate freeze may have had an impact  
6 on the timing of ComEd's filing of Rider ECR?

7           A     It might or it might not.   That's a  
8 hypothetical I would hate to answer it.

9           Q     Let's try it this way.

10                         In 2003, according to Attachment 1,  
11 ComEd expended more than \$45 million in environmental  
12 remediation costs.   Don't you think that, but for a  
13 rate freeze, it might have done something, like a  
14 propose a rider to this Commission, to help gain  
15 approval of those costs if there weren't a rate  
16 freeze in effect?

17           MR. JOLLY:   I guess I'll object the question.  
18 The question calls for speculation.

19           JUDGE DOLAN:   I'll -- Counsel, can you rephrase  
20 the question, please?

21           MR. BERNSTEIN:   Well, I will your Honor, but  
22 let me point out that the passage in question here,

1 in the rebuttal testimony of the witness at Lines 38  
2 and 40 of his testimony, indulges in exactly the same  
3 sort of speculation.

4 And I'm asking the witness whether it  
5 is equally likely, indeed not a whole lot more  
6 likely, that it was the rate freeze that called into  
7 question. It seems to me I'm entitled to test that  
8 statement.

9 He says the simplest explanation is  
10 that the costs are, in fact, not as volatile. He is  
11 speculating as to what ComEd's reason was. It seems  
12 I'm entitled to challenge that speculation on that  
13 reasoning.

14 JUDGE DOLAN: All right. Then I'll overrule  
15 the objection.

16 Go ahead and answer.

17 THE WITNESS: The order, as I understand it,  
18 came out in '91. Well, the docket was opened in '91.  
19 It might have come out in '92. That's five or six  
20 more years before the rate freeze went into effect.  
21 And, yet, they were still collecting under base  
22 rates.

1 BY MR. BERNSTEIN:

2 Q When did the Supreme Court decision come  
3 down that affirmed it?

4 A I don't know.

5 Q Would you accept, subject to check, it was  
6 1995?

7 A Yes. That is still two years before the  
8 rate freeze.

9 Q And the rate freeze was -- at least rate  
10 freeze legislation was at least six years before  
11 ComEd's costs of environmental remediation shot up to  
12 this level of \$2 million that they reached in  
13 2002; isn't that true?

14 Strike that. You can't tell that.  
15 The exhibit only shows four years.

16 At Page 4 of your rebuttal testimony,  
17 Lines 65 and 66, you use the phrase "significant  
18 issue." Do you see where I'm referring?

19 A Yes.

20 Q And you indicate that whether ComEd's  
21 non-MGP remediation costs should be recovered through  
22 a rider is a significant issue?

1           A     Yes.

2           Q     Please explain how it is that this is a  
3     significant issue if ComEd's non-MGP environmental  
4     costs are not worthy of rider recovery?

5           A     I think the Commission has a long history  
6     of pointing out that riders are to be used -- or are  
7     to be looked at very carefully. I think in the first  
8     fuel adjustment cost case, they said so explicitly.  
9     I reference that in my testimony.

10                   The use of riders shifts risks  
11     explicitly from the utility to customers. The  
12     customers have no control over those costs. So I  
13     think it's good public policy to be very diligent  
14     when looking at any rider. That's why I would say  
15     it's a significant issue.

16          Q     Let's explore that concept. Indeed, you  
17     address this in your rebuttal testimony, don't you?  
18     You speak specifically about riders placing a portion  
19     or whatever costs they apply to those costs beyond  
20     traditional Commission review. Do you recall using  
21     that phrase?

22          A     Could you point me to that?

1 Q Sure. Page 4, Lines 70 and 72.

2 A Yes.

3 Q As you think about that passage now, is it  
4 still your view that Rider ECR as now proposed by  
5 ComEd would place ComEd's review of environmental  
6 remediation costs beyond traditional Commission  
7 review?

8 A I think the point I was trying to make  
9 there is we haven't had a proceeding to develop a  
10 full record on whether non-MGP costs should be  
11 allowed to be put under a rider. It wasn't speaking  
12 to the mechanisms in Rider ECR and whether they were  
13 adequate to allow Commission review or not.

14 Q I see. So you're backing off of your  
15 concerns about putting costs beyond traditional  
16 Commission review at this point?

17 A I'm always concerned if any kind of cost  
18 recovery is beyond Commission review. I don't think  
19 I said that at all.

20 Q Are you aware that ComEd's proposal  
21 includes provision for an annual reconciliation and  
22 prudence review of its costs recovered through the

1 rider?

2 A Yes.

3 Q An annual prudence review preserves and  
4 indeed may even be thought to enhance the opportunity  
5 for traditional Commission review or oversight, if  
6 you will, of costs; isn't that right?

7 A Only in the first instance a record is  
8 developed in a rider proceeding that shows that those  
9 costs should even be allowed under the rider.

10 Q What kind of evidence would you want to  
11 examine in that proceeding?

12 Assuming we're going to, in the actual  
13 annual reconciliation proceeding, look at prudence,  
14 what are you going to look at in this separate  
15 proceeding that you wouldn't be looking at or be able  
16 to look at each and every year under the rider?

17 A As you said before, the rider is formulaic  
18 and quite often it becomes just an accounting review  
19 were the costs that the utility is looking to recoup  
20 actually incurred. If so, pass to go. If not, then  
21 not.

22 Q Are you suggesting that there is language

1 in the proposal in this proceeding that would limit  
2 the Commission in the annual reconciliation  
3 proceeding from examining the prudence of the company  
4 incurring costs to be recovered under the rider?

5 A No. I'm just saying from -- no, no.

6 Q What you're saying is it may become  
7 somewhat ritualistic and not looked at very carefully  
8 in an annual prudence review?

9 A Yes.

10 Q Of course, the same thing can happen in a  
11 base rate, isn't it? You're the one who used the  
12 phrase costs kind of get swept away or overlooked  
13 rather than singled out; isn't that correct?

14 A That's correct.

15 Q Would you agree, Mr. Walter, that the  
16 prospect of a potential prudence disallowance would  
17 at least tend to provide incentive for ComEd to  
18 manage efficiently its environmental remediation  
19 costs?

20 A Yes, there are -- that's on one side of the  
21 balance. And then there are disincentives on the  
22 other side of the balance.

1           Q     Would you explain that.

2           A     Sure.  If Edison is able to recover all of  
3     its costs through a rider, they would have no  
4     incentive to drive a hard bargain, let's say, when  
5     they are doing legal settlements.

6                     If they are not responsible -- if they  
7     don't have any skin in the game as they would with  
8     base rates, but could pass all the costs onto the  
9     customers, there's no incentive for them to bargain  
10    as hard as they could.

11          Q     And my question to you was, doesn't the  
12    prospect for a prudence disallowance in annual  
13    proceeding before this Commission convene  
14    specifically for the purpose of examining issues like  
15    the prudence of those costs to give Edison, to use  
16    your phrase, some skin in the game?

17          A     I said a prudence review might provide that  
18    incentive on the one side of the balance, but the  
19    structure of the rider provides a disincentive on the  
20    other side of the balance.

21                     I don't know how the Commission could  
22    review the prudence of a settlement discussion when



1 settlement discussions, as I understand them, are not  
2 discoverable, you don't know what the actual costs  
3 should have been, would have been.

4 Q But you can review the reasonableness of  
5 the resulting settlement, can't you?

6 A Yes.

7 MR. BERNSTEIN: I have no further questions.

8 JUDGE DOLAN: Redirect?

9 MR. JOLLY: Could I have a couple minutes?

10 JUDGE DOLAN: Yes. Off the record.

11 (Discussion off the record.)

12 JUDGE DOLAN: Back on the record.

13 MR. JOLLY: Thank you. I just have a couple  
14 questions.

15 REDIRECT EXAMINATION

16 BY

17 MR. JOLLY:

18 Q Mr. Bernstein asked you some questions  
19 regarding whether the prospect of a prudence  
20 disallowance in a Rider ECR proceeding would provide  
21 an incentive for ComEd to minimize its costs,  
22 environmental remediation costs. Do you recall that

1 line of questioning?

2 A Yes.

3 Q And one of your answers you referred to, I  
4 think you said it was the fuel adjustment clause  
5 order, you said it was in your testimony. Did you  
6 misstate that?

7 A Yes, I did. It's actually in the response  
8 to a data request.

9 MR. JOLLY: And it's a data request that I'd  
10 like to have marked as City Redirect Exhibit 1. I  
11 only have one copy with me right now.

12 Do you have it, Mr. Bernstein?

13 MR. BERNSTEIN: No.

14 MR. JOLLY: Oh, here. We have two copies  
15 between us. So you can have one.

16 MR. BERNSTEIN: This is a little long. I need  
17 a few minutes to read it.

18 MR. JOLLY: I will have this marked as an  
19 exhibit. I just don't have the copies right now.

20 BY MR. JOLLY:

21 Q But is it true in this question you were  
22 asked regarding Lines 102 through 104 from your

1       rebuttal testimony?

2               A       Yes.

3               Q       And in there, specifically, you were asked  
4       about your statement that, Allowing ComEd to recover  
5       these costs through the rider could remove the  
6       utility's economic incentive to pursue cost  
7       recoveries from other PRPs -- which stands for  
8       Potentially Responsible Parties -- an incentive that  
9       competitive businesses have.

10                               Did I read that correctly?

11              A       Yes.

12              Q       And in the second paragraph of that -- of  
13       your answer, did you not refer to the Commission's  
14       order implementing or adopting a uniform fuel  
15       adjustment clause in Docket 78-0457?

16              A       Yes.

17              Q       And would you please read the portion of  
18       the response beginning with "The Commission" there.

19              MR. BERNSTEIN:   Your Honor, I'm going to  
20       object.   What is the purpose of this exercise?   We've  
21       marked it as an exhibit.   There's been no foundation  
22       established.   I don't have any reason to believe at

1       this moment that this witness wrote this response.

2       Indeed, I suspect his counsel wrote this response.

3                       What is the purpose of having him read  
4       it?  He's putting words in his mouth.

5               MR. JOLLY:  If you would prefer, I'll move for  
6       the admission of it.

7               MR. BERNSTEIN:  There's no foundation.  I  
8       object.

9               JUDGE DOLAN:  I was going to say why don't you  
10      set a proper foundation.

11     BY MR. JOLLY:

12              Q     Mr. Walter, was this document prepared by  
13      you --

14              A     Yes.

15              Q     -- or at your direction?

16              A     Yes.

17              MR. JOLLY:  And with that, I would move for the  
18      admission of City Redirect Exhibit 1.

19              MR. BERNSTEIN:  I'll let it go.  I do not  
20      object.

21              JUDGE DOLAN:  Do you want to have the document  
22      speak for itself, Counsel, or do you want him to --

1           MR. BERNSTEIN: The document will speak for  
2   itself. I object to his reading from it.

3           JUDGE DOLAN: All right. What was that data  
4   request?

5           MR. JOLLY: It was ComEd City of Chicago data  
6   request 3.05.

7           JUDGE DOLAN: 3.05.

8                               (Whereupon, City  
9                               Redirect Exhibit No. 1 was  
10                              marked for identification  
11                              as of this date.)

12          JUDGE DOLAN: And you will provide copies?

13          MR. JOLLY: Yes.

14          JUDGE DOLAN: Any other questions?

15          MR. JOLLY: That's it?

16          JUDGE DOLAN: Any recross?

17                              RECROSS EXAMINATION

18                              BY

19                              MR. BERNSTEIN:

20          Q    Mr. Walter, are you familiar with the  
21   proceedings in Docket 78-0457 that's referred to in  
22   this answer?

1           A     Parts of it, yes.

2           Q     Have you read the entire order?

3           A     No.

4           MR. BERNSTEIN:   I have nothing further.

5           JUDGE DOLAN:   Thank you.   Why don't we just go  
6 ahead and move on to the next witness.   I believe  
7 Mr. Meehan of ComEd.

8           MS. FONNER:   Your Honor, before we put  
9 Mr. Meehan on the stand, note that my appearance has  
10 not been recorded yet for purposes of the evidentiary  
11 proceedings.   Cynthia Fonner, Foley & Lardner, 321  
12 North Clark, Suite 2800, Chicago, Illinois 60610  
13 appearing on behalf of Commonwealth Edison Company.

14          JUDGE DOLAN:   Mr. Meehan, raise your right  
15 hand, please.

16                               (Witness sworn.)

17          JUDGE DOLAN:   Proceed, Counsel.

18

19

20

21

22

1                                   MICHAEL J. MEEHAN,  
2   called as a witness herein, having been first duly  
3   sworn, was examined and testified as follows:

4                                   DIRECT EXAMINATION

5                                   BY

6                                   MS. FONNER:

7               Q    Please state your full name and business  
8   address for the record.

9               A    Michael J. Meehan. My business address is  
10   2 Lincoln Center, Oak Brook Terrace, Illinois.

11              Q    Are you the same Michael J. Meehan that  
12   provided prefiled testimony in this proceeding?

13              A    Yes.

14              Q    Do you have before you a document labeled  
15   as ComEd Exhibit 26.0, Rebuttal Testimony of Michael  
16   J. Meehan?

17              A    Yes.

18              Q    Was this document prepared by you or under  
19   your direction or control?

20              A    Yes, it was.

21              Q    If I asked you the same questions today,  
22   would your answers remain the same?

1           A     Yes, they would.

2           Q     Is it your desire that this be used as a  
3     rebuttal testimony in this proceeding?

4           A     Yes, it is.

5           Q     Do you also have before you a document  
6     labeled ComEd Exhibit 43.0, Surrebuttal Testimony of  
7     Michael J. Meehan?

8           A     Yes, I do.

9           Q     Was this document prepared by you or under  
10    your direction and control?

11          A     Yes, it was.

12          Q     If I asked you the same questions today,  
13    would your answers remain the same?

14          A     They would.

15          Q     Is it your desire that this document be  
16    treated as your surrebuttal testimony in this  
17    proceeding?

18          A     Yes, it is.

19          MS. FONNER: I would ask that ComEd Exhibits 26  
20    and 43 be admitted into evidence at this time.

21          JUDGE DOLAN: Any objection?

22          MR. TOWNSEND: None.



1 JUDGE DOLAN: ComEd Exhibit No. 26 and ComEd  
2 Exhibit No. 43 will be admitted into evidence.

3 (Whereupon, ComEd  
4 Exhibit Nos. 26 and 43 were  
5 admitted into evidence  
6 as of this date.)

7 JUDGE DOLAN: Proceed.

8 CROSS EXAMINATION

9 BY

10 MR. TOWNSEND:

11 Q Good afternoon, Mr. Meehan.

12 A Good afternoon.

13 Q Chris Townsend appearing on behalf of the  
14 Coalition of Energy Suppliers.

15 Mr. Meehan, would you agree that  
16 customers benefit when ComEd adopts policies to  
17 maximize operational and administrative efficiency?

18 A Yes, I do.

19 Q Would you agree that increased efficiency  
20 results in lower costs to customers?

21 A Yes, I do.

22 Q Would you explain what steps you have taken

1 to work with other Exelon entities to determine best  
2 practices to maximize operational and administrative  
3 efficiency and to promote customer choice?

4 MS. FONNER: I'd object in terms of the  
5 relevance specifically to the testimony that  
6 Mr. Meehan has provided. His testimony was limited  
7 to particular areas based upon CES witness proposals  
8 and their direct testimonies. So I don't believe  
9 that a broad discussion of customer choice is  
10 appropriate at this point for Mr. Meehan.

11 MR. TOWNSEND: I'm not asking for a broad  
12 discussion of customer choice. I'm asking what he  
13 did in order to maximize operational efficiency. The  
14 question is how has he reached out to other Exelon  
15 entities to determine whether or not the practices  
16 that he's advocating here are efficient practices.

17 JUDGE DOLAN: I'm going to overrule the  
18 objection.

19 If you can answer it, go ahead.

20 THE WITNESS: Would you restate it, please.

21 BY MR. TOWNSEND:

22 Q Yes. Can you please explain what steps

1     you've taken to work with other Exelon entities to  
2     determine best practices in order to maximize  
3     operational and administrative efficiency and to  
4     promote customer choice?

5             A     There are two separate parts. For  
6     operational efficiencies, there's a lot of different  
7     processes that I've been involved in.

8                     As far as customer choice, for Exelon  
9     entities, we have focused on ComEd business processes  
10    and current ComEd business processes for customer  
11    choice within Illinois.

12            Q     When you say with regards to operational  
13    efficiencies there have been lots of processes, are  
14    those processes with other Exelon entities?

15            A     I've previously worked on the operations  
16    side of the house, the wire side, and worked on some  
17    operational efficiencies across the board, worked  
18    management areas for ComEd and for other energy  
19    delivery companies within ComEd -- within Exelon.

20            Q     So you personally have done work for PECO?

21            A     I have done work for ComEd and PECO in a  
22    previous position.

1 Q Do you continue to work with PECO?

2 A No, I do not continue to work with PECO.

3 Q Do you continue to work with your  
4 counterpart at PECO?

5 A I do not work with my counterpart at PECO.  
6 At this point, I don't know if I have a counterpart  
7 at PECO because my job just changed to post 2006  
8 business processes. It's a very unique position.

9 Q Is there someone at PECO that is  
10 responsible for implementing operations for customer  
11 choice?

12 A I am not aware if there is anyone currently  
13 responsible. They're in operation mode. They're not  
14 making any significant changes to my knowledge.

15 Q But you were there when they were making  
16 changes?

17 A I was not, no.

18 Q You were there after they made changes?

19 A I was not involved with their customer  
20 choice, if that's what the question is. I'm not  
21 involved with customer choice.

22 Q When did you work with PECO?

1           A     I worked with PECO starting in  
2     approximately August of 2004 through June of 2005. I  
3     was in the wire side of the house working with their  
4     work management on operational issues.

5           Q     Based upon your background, it appears that  
6     you've worked within ComEd to improve its efficiency  
7     with regards to open access by implementing computer  
8     solutions to the company's interactions with  
9     customers and suppliers; is that correct?

10          A     That's correct.

11          Q     Do you believe the computers can improve  
12     the efficiency with which operational and  
13     administrative systems are managed?

14          A     Yes, I do.

15          Q     What is a DASR, D-A-S-R?

16          A     I hope I get it right. Direct Access  
17     Service Request.

18          Q     Does ComEd process DASR's manually?

19          A     No. ComEd processes DASRs electronically.

20          Q     Were you responsible for implementing that  
21     system?

22          A     I was responsible for implementing that

1 system, yes.

2 Q ComEd uses a manual system to enroll  
3 customers to take service underneath its power  
4 purchase option or PPOs; correct?

5 A That's correct.

6 Q And ComEd also uses a manual system for  
7 customers to enroll in its bundled products; correct?

8 A Its bundled products. I'm actually  
9 familiar with the PPO process more than I would be  
10 the other bundled products.

11 Q How about post 2006, will ComEd use a  
12 manual process to enroll customers in the CPP  
13 product?

14 A We'll use a manual process for that,  
15 correct.

16 Q And in order to enroll customers underneath  
17 the PPO, ComEd manually completes and sends a DASR to  
18 itself; is that correct?

19 A Actually, the customer or the requesting  
20 entity would complete a PPO, a manual PPO. That  
21 PPO -- that document we would take and we would turn  
22 that into an electronic DASR.

1           Q     You manually turn it into an electronic  
2     DASR?

3           A     We take the piece of paper and we enter it  
4     in as a DASR, correct.

5           Q     I'm sorry.  If you could turn in your  
6     rebuttal testimony to Lines 269 to 271.  There you  
7     say that ComEd sends a DASR to itself in the same  
8     manner that a res would send a DASR for a customer to  
9     begin taking service from that res.  What is that  
10    process?

11          A     What ComEd does is it receives a paper DASR  
12    from the requesting entity, a paper request to put a  
13    customer on PPO.  We take that customer request, we  
14    enter it into a system within ComEd, then it turns  
15    into an electronic DASR.  Then that DASR gets sent  
16    into ComEd as any other DASR would from any other  
17    energy supplier.

18          Q     I'd like to turn to the discussion with  
19    regards to the GAA form, the General Account Agency  
20    form.

21                         You understand that there are two  
22    recommendations that the Coalition has made regarding

1 revisions to ComEd's GAA form; correct?

2 A There's a few. I'm not sure if it's just  
3 two, but they've requested some revisions.

4 Q In your surrebuttal at Lines 29 through 32,  
5 you refer to the two recommendations that the  
6 Coalition has made; correct?

7 A Let me take a look.

8 Q Sure.

9 A I'm having an issue with the line numbers.  
10 I'm sorry.

11 Q That's all right. Surrebuttal lines 29  
12 through 32.

13 A Yes. I summarized them into two  
14 recommendations, an effective date and check boxes,  
15 correct.

16 Q So the first recommendation is to add an  
17 effective date to the GAA form to allow customers to  
18 specify the date upon which ComEd should recognize  
19 the ongoing customer agent relationship; correct?

20 A That's correct.

21 Q And the second recommendation is that ComEd  
22 add check boxes to the form in order to allow



1 customers to select what rights are given to a  
2 particular agent; correct?

3 A That's correct.

4 Q What is a GAA?

5 A It is a General Account Agency form. It is  
6 a form that ComEd receives to authorize an agent for  
7 a particular customer.

8 Q And I guess I wasn't really asking about  
9 the form. I was asking actually what is a GAA? What  
10 is a general accounting agent?

11 A It's an agent for a particular customer.  
12 And as an agent, they can act in the place of that  
13 customer.

14 Q What types of services do GAAs provide to  
15 customers?

16 A I'm not familiar with what services they  
17 would supply. I know that on our side,  
18 business-wise, we treat them as in place of the  
19 customer to make delivery service tariff selections  
20 for the customer.

21 Q That's one thing. You also use GAAs to  
22 receive and pay the bills that come from ComEd;

1 correct?

2 A I treat -- they're in place of the  
3 customer. We could send the bill to the GAA just as  
4 we would send the bill to the customer.

5 Q So a GAA could first select the tariff  
6 underneath which a customer takes service and,  
7 second, could receive and pay the bills?

8 A That's correct.

9 Q Would you agree that there are some  
10 companies in the Illinois retail electric market that  
11 specialize in facilitating bill receipt and payment?

12 A I'm actually not aware if there are  
13 companies that specialize in that.

14 Q You don't know who the GAAs are?

15 A I'm not aware of who the GAAs are as of  
16 this moment, no.

17 Q Well, GAAs account agents have existed for  
18 a long time, haven't they? They aren't new entities;  
19 right?

20 A No, they are not.

21 Q They existed before customer choice;  
22 correct?

1           A     Agents existed before customer choice,  
2     correct.

3           Q     And those agents at that time were  
4     facilitating bill payment and receipt; correct?

5           A     I'm not aware if they were or not, no.

6           Q     Would you agree that there are companies in  
7     the Illinois retail electric market that specialize  
8     in advising customers regarding tariff selection?

9           A     Yes, I would agree with that. There are  
10    companies that do that.

11          Q     And these types of companies that advise  
12    customers regarding tariff selection are new?

13          A     I would say they are new. They could have  
14    existed beforehand in tariff selection, but there's  
15    more of them now.

16          Q     Would you agree that it is possible that a  
17    customer would want separate agents to perform  
18    separate functions?

19          A     It is possible that a customer could want  
20    separate agents to perform different functions.

21          Q     So it's possible that a customer could want  
22    one company to receive its bills and pay its bills

1     and another company to assist with its tariff  
2     selection; correct?

3             A     That would be possible.

4             Q     Are there restrictions upon who can become  
5     a GAA?

6             A     No, there are not restrictions right now  
7     who can become a GAA that I'm aware of.

8             Q     An individual can become a general account  
9     agent?

10            A     An individual -- there's a -- under the  
11     definition of the GAA, a general account agent is  
12     different than an individual acting on behalf of a  
13     customer if they receive payment or some kind of  
14     remuneration for acting as an agent.

15                   What I'm particularly thinking of is  
16     the way ComEd can set it up, you can take care of  
17     your aunt or your uncle's account. And that has the  
18     same authority as a GAA, as far as ComEd is  
19     concerned.

20                   In that case, we don't consider them  
21     to be an agent because they're not getting paid for  
22     that service. The difference between the two is one

1 is paid for the service.

2 Q That type of agent that you're talking  
3 about is only available underneath the GAA tariff for  
4 residential customers; correct?

5 MS. FONNER: I'm sorry. I'm going to have to  
6 ask for clarification. I believe he referred to two  
7 different individuals.

8 BY MR. TOWNSEND:

9 Q You just described an individual who  
10 received a bill on behalf of his aunt or his uncle  
11 and paid that bill. That type of agent is recognized  
12 specifically underneath your tariffs as not being a  
13 GAA?

14 A Correct.

15 Q And that is true only because that agent is  
16 acting on behalf of a residential customer; correct?

17 A I don't think it's defined that way. I've  
18 tried to think if there's a way -- a situation where  
19 it would be that way, but I couldn't say whether it's  
20 correct or not. I'm only familiar with the  
21 residential example.

22 Q Are you familiar with the general terms and

1 conditions that are being proposed by ComEd in this  
2 proceeding with regards to GAAs?

3 A I didn't know they were going to be  
4 different than the previous GAA conditions or terms  
5 and conditions. So I would say if they're new ones,  
6 I have not read the new terms and conditions.

7 Q Are you familiar with the existing terms  
8 and conditions?

9 A Yeah. I've read the existing terms and  
10 conditions.

11 Q Do you have with you a copy of the proposed  
12 terms and conditions?

13 A I do not.

14 (CHANGE OF REPORTER.)

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1 (Change of reporters.)

2 MR. TOWNSEND: Does counsel.

3 MS. FONNER: Not the proposed.

4 MR. TOWNSEND: All those boxes, you don't have  
5 the proposed tariffs?

6 MS. FONNER: You asked me whether I personally  
7 have it. I do not have it in front of me.

8 MR. TOWNSEND: No. I'm asking counsel in one  
9 of the three law firms.

10 MS. FONNER: If you have something in front of  
11 you, perhaps you can provide it us to, Mr. Townsend.

12 MR. TOWNSEND: I'll go ahead and pull it out of  
13 my briefcase. If you could have someone look over  
14 yours as well, I'd appreciate it.

15 And, particularly, I'm looking for  
16 Sheet No. 511. I believe that's where it starts.

17 MS. FONNER: Do you have an extra copy that you  
18 care to show us while we look through as we do not  
19 know that you intended to actually deal with this  
20 particular sheet during cross-examination.

21 MR. TOWNSEND: May I approach the witness your  
22 Honor?

1 JUDGE DOLAN: Certainly.

2 MR. TOWNSEND: Thank you.

3 BY MR. TOWNSEND:

4 Q Have you had an opportunity to review that?

5 A I stopped about halfway through because I  
6 think I've reviewed it, yes.

7 Q And so can you clarify when it is that an  
8 individual who receives a bill is not classified as a  
9 GAA?

10 A It's under the residential -- if I'm  
11 reading it correctly, the residential retail  
12 customer.

13 Q So if a company hired an individual to act  
14 as their agent, that individual would be classified  
15 as a GAA?

16 A Yes.

17 Q And, likewise, companies can be GAAs;  
18 correct?

19 A Yes.

20 Q Are there individuals currently acting as  
21 GAAs?

22 A I'm not aware and not sure.



1           Q     Are there currently companies acting as  
2   GAAs?  
3           A     Yes, there are.  
4           Q     What is a RES, R-E-S?  
5           A     A Retail Electric Supplier.  
6           Q     Can RESs be GAAs?  
7           A     A RES can act as G and A -- as a GAA.  
8           Q     And, currently are a subset of the GAAs  
9   RESs?  
10          A     Some GAAs are also RESs, yes.  
11          Q     You indicated that there are about 50 GAAs  
12   currently; correct?  
13          A     That's correct.  
14          Q     How many of those are RESs?  
15          A     I believe around ten.  
16          Q     Although it is possible for a customer to  
17   make its RES its GAA, there's not a requirement that  
18   the customers RES also be its GAA; correct?  
19          A     A customer's RES does not also have to be  
20   its GAA, that's correct.  
21          Q     Nevertheless, would you agree that in most  
22   instances when a customer has selected a RES that the

1 customer's RES is also the customer's GAA?

2 A And in many -- in most instances when a  
3 customer selects a RES, the customer has been  
4 selecting that company to be its GAA also.

5 Q That's the typical process?

6 A It would be the majority process at this  
7 point.

8 Q There's no requirement that GAAs be  
9 certified by the ICC; correct?

10 A That's correct.

11 Q There is a requirement that RESs be  
12 certificated by the ICC; correct?

13 A That's correct.

14 Q And ARES need to demonstrate technical,  
15 managerial and financial capabilities prior to  
16 obtaining a certificate; correct?

17 A That's correct.

18 Q And RESs are subject to continuing ICC  
19 oversight; correct?

20 A I believe they are, yes.

21 Q And ARES must make annual compliance  
22 filings in order to retain their ARES certificate;

1 correct?

2 A I would agree with what you're saying, yes.

3 Q RESs must register with ComEd in order to  
4 provide service in ComEd service territory; correct?

5 A Yes, they must.

6 Q And RESs must enter into a Retail Electric  
7 Supplier agreement with ComEd before supplying  
8 customers; correct?

9 A That's correct.

10 Q RESs must have appropriate systems in place  
11 to allow for electronic interchange, or EDI, with  
12 ComEd; correct?

13 A That's correct.

14 Q And RESs must also enter into an EDI  
15 contract with ComEd; correct?

16 A That's correct.

17 Q Would you agree that RESs are unique subset  
18 of the GAAs in ComEd's service territory?

19 A They're one of the subsets of GAAs in  
20 ComEd's territory, I would say, RESs, yes. It's -- I  
21 don't know if it's a subset or just a separate  
22 entity. We consider it more to be a separate entity

1       than a subset.

2           Q     Out of the world of GAAs, a subset of those  
3       GAAs are RESs; correct?

4           A     I consider it to be two different roles and  
5       not a subset of one of the other. I consider -- and  
6       the way we've implemented the RES, is that it's a  
7       separate role from the GAA.

8           Q     Out of the 50 GAAs, you indicated that ten  
9       are RESs; correct?

10          A     That's correct.

11          Q     So a subset of GAAs are RESs; correct?

12          A     It's not the way we looked at it from a  
13       business standpoint.

14          Q     I understand that you may have a different  
15       viewpoint from a business perspective. I'm just  
16       asking, as a factual matter, are RESs a unique subset  
17       of GAAs?

18          A     Again, I don't -- we don't consider them a  
19       subset of GAAs. We consider two separate roles.

20          Q     From your business perspective.

21          A     From the business perspective.

22          Q     But not factually. There's a distinction

1       here; correct?

2                       Factually, ten of 50 are unique in

3       that they are certificated RESs; correct.

4           A       They play a role also as a RES, yes.

5           Q       So that was a "yes" to that question?

6           A       They play a role of the RES. I don't

7       consider the RES to be a subset of the GAAs.

8           Q       From your business perspective?

9           A       From the business process perspective,

10       correct.

11          Q       There are other unique rules for other

12       subsets of agents; correct?

13          A       We looked at particulars you'll be

14       referring to.

15          Q       Well, we already talked about one of them;

16       didn't we? The agent who's acting on behalf of a

17       residential customer is treated differently than

18       other agents?

19          A       Than other agents, that's correct.

20          Q       They don't have to jump through the same

21       hoops as other GAAs; right?

22          MS. FONNER: I'd object to the

1     characterization.  It was very specific to an  
2     individual person and not an entity.

3             JUDGE DOLAN:  Can you rephrase the question.

4                     Was it the jumping through the hoops  
5     part?

6             MS. FONNER:  It was the characterization of  
7     somebody who is not a RES who is serving customers  
8     doesn't have to jump through the same hoops.

9                     And if Mr. Townsend is alluding to the  
10    proposed revisions to the general terms and condition  
11    that was specific to an individual who was providing  
12    service to a residential customer.  I wanted to make  
13    that --

14    BY MR. TOWNSEND:

15             Q     Those individuals don't have to jump  
16    through the same hoops; right?

17             A     In order to act on behalf of one customer,  
18    those individuals do not have to sign the GAA form.

19             Q     How many of those individuals exist?

20             A     I could not tell you right at this time.  I  
21    don't have that -- don't have knowledge of that.

22             MR. TOWNSEND:  I'd like to ask an on-the-record

1 data request for that number, please. ComEd to  
2 provide them to us.

3 BY MR. TOWNSEND:

4 Q Is that information that you could obtain,  
5 Mr. Meehan?

6 A It's information that we could ascertain,  
7 yes.

8 Q Thank you.

9 Likewise, agents who have designated  
10 to act on behalf of customers prior to May 1st, 2002,  
11 are treated differently; correct.

12 A There was a provision for agents that were  
13 acting before May 2002. There are some different  
14 provisions for those agents.

15 Q And they also escape the hoops of having to  
16 fill out a GAA form; correct?

17 A I'm not sure if that's what makes them  
18 different. I do know they're different provisions.

19 Q Could you review the Sheet 511 once again  
20 and see if that refreshes your recollection.

21 Or if counsel has been able to find a  
22 copy for you, perhaps I could get my copy back.

1           A     It states that if they have been -- if I  
2     read it correctly, it states that, If they've been  
3     acting as an agent prior to May 1st, 2002, to  
4     continue the act -- they act as an agent.

5           Q     And they don't have to fill out a GAA form;  
6     correct?

7           A     They're not required to be -- they're not  
8     required to be a GAA, so I would assume they do not  
9     have to fill out a form to be one.

10          Q     How many of those entities exist?

11          A     That, I do not know.

12          Q     Is that information that you could obtain?

13          A     I'm not definite -- I'm not totally sure  
14     that I can obtain that, but we can take a look at.

15          MR. TOWNSEND: I'd like to ask another  
16     on-the-record data request for that information,  
17     please.

18     BY MR. TOWNSEND:

19          Q     So there are two unique subsets already of  
20     GAAs, the individuals that we discussed that receive  
21     a residential bill and agents that were designated as  
22     agents prior to May 1st, 2002; correct?



1           A     There are two different conditions under  
2     which others have been GAAs before 2002, correct.

3           Q     How does someone become a GAA, setting  
4     aside those two examples of agents? How does an  
5     entity or a person become a GAA?

6           A     There's a form that the entity -- the agent  
7     fills out along with the customer they want to act as  
8     the agent for.

9           MR. TOWNSEND: If I may approach.

10                         (Whereupon, CES Cross  
11                         Exhibit No. 1 was marked  
12                         for identification.)

13     BY MR. TOWNSEND:

14           Q     I'll hand you what's being marked as CES  
15     Cross Exhibit 1.

16                         Can you identify that.

17           A     It's a GAA form in order to become a GAA.

18           Q     And does that form currently have an  
19     effective date?

20           A     It does not.

21           Q     And does that form presently allow for  
22     different types of agencies; that is, does it allow

1     for one agent to receive and pay the bill and the  
2     other agent to make tariffs selection?

3             A     It does not.

4             MR. TOWNSEND:   I'd like to move into evidence,  
5     CES Cross Exhibit 1.

6             JUDGE DOLAN:   Any objection.

7             MS. FONNER:    No.

8             JUDGE DOLAN:   CES Cross Exhibit No. 1 will be  
9     admitted into evidence.

10                             (Whereupon, CES Cross  
11                             Exhibit No. 1 was admitted  
12                             into evidence.)

13     BY MR. TOWNSEND:

14             Q     How long does it take ComEd to process the  
15     GAA form --?

16             A     The form?

17             Q     -- the Designated GAA, or DGAA form?

18             A     I'm not aware of the current metrics for  
19     processing the forms.

20             Q     Is that information that you could find  
21     out?

22             A     That's information that we could find out.

1           MR. TOWNSEND: I'd like to asked a third  
2 on-the-record data request, please.

3 BY MR. TOWNSEND:

4           Q     And I'd also like to -- I guess when you  
5 provide that response, I'd be interested in finding  
6 out any written policies that you have with regards  
7 to how long it takes to process that form.

8           MS. FONNER: I'm going to object. The  
9 opportunity -- discovery in this matter is not new.  
10 We received zero data requests on this topic.

11                     The middle of evidentiary hearing is  
12 not the time to ask the company to get information  
13 that CES couldn't have possibly used during this  
14 proceeding in any event because the proceedings will  
15 be closed.

16           MR. TOWNSEND: The problem I have is that he  
17 testified that they processed these immediately, and  
18 so I thought that he would know what that meant. His  
19 testimony rebuttal at Lines 130 to 131 discusses the  
20 processing of the GAA forms.

21                     So I thought that he would be coming  
22 here prepared today to answer questions about that

1 testimony.

2                   So I didn't know I had to ask all my  
3 questions ahead of time.

4           JUDGE DOLAN: Counsel, you want to respond to  
5 that? Because it does say that.

6           MS. FONNER: And I think what Mr. Meehan  
7 indicated is, as the GAA form is received, it is  
8 processed. That is what it means to immediately  
9 process a form.

10                   The length of time -- certainly  
11 nothing is immediate. There's always a time period  
12 involved. But the fact of the matter is, as soon as  
13 the form is received, ComEd undertakes to make that  
14 agency effective.

15           MR. TOWNSEND: I'd like to move to strike her  
16 testimony here, and I don't think that that was  
17 responsive to the fact that this is a proper cross  
18 question given his testimony. And it's appropriate  
19 on-the-record data request when the witness didn't  
20 have the response to the testimony that was provided.

21           JUDGE DOLAN: He doesn't even know if this  
22 information exists, I guess, is what she's trying to

1 allude to.

2 MR. TOWNSEND: Well, I've asked them to go back  
3 and try to find out. And he's indicated that he  
4 could go back and try to find out whether or not that  
5 exists.

6 And so if they come back and say, We  
7 just don't know, that's an okay answer too. I mean,  
8 it's not really okay; but, I mean, we'll accept it.

9 JUDGE DOLAN: That's fine.

10 MR. TOWNSEND: Thank you.

11 MS. FONNER: But --.

12 JUDGE DOLAN: I'm going to overrule your  
13 objection.

14 MR. TOWNSEND: Thank you.

15 BY MR. TOWNSEND:

16 Q How does someone notify ComEd that it's  
17 terminating its relationship with its GAA?

18 A I am not familiar with the process of  
19 terminating the GAA relationship.

20 Q If I showed you a form, might that refresh  
21 your recollection?

22 A I have not seen the form to terminate a GAA

1 relationship.

2 Q Isn't your job to set up the processes to  
3 process forms?

4 A My job is to set up the new processes for  
5 post-2006.

6 Q Are you not going to use a form to allow  
7 for terminating GAAs post-2006, or would you like me  
8 to provide you with something that might refresh your  
9 recollection as to whether or not you are going to  
10 have a form?

11 A If it has to do with where we're at in the  
12 development process for the business process of  
13 post-2006.

14 Q So you don't know whether or not there's  
15 going to be a GAA termination form?

16 A As I would make assumptions at this point,  
17 we would probably keep the same forms going forward.  
18 We're not to that point yet. We're taking a look at  
19 how we're going to do the business processes. We're  
20 looking at how we're going to do the business process  
21 for post-2006.

22 Q So you're familiar with the current GAA --?

1           A     I'm actually --.

2           Q     -- form?

3           A     -- not familiar with the current GAA form.

4           Q     Is there a witness who's going to testify  
5     that would be familiar with that?

6           A     I don't believe there's a witness that  
7     would be familiar with the GAA -- the termination for  
8     GAAs.

9           Q     So as you sit here today, you don't know  
10    whether or not we're going to have a post-2006 form  
11    for termination of GAAs?

12          A     I have lots of assumptions on lots of  
13    business processes for post-2006, and those are  
14    things that we're working through right now to get  
15    ready for post-2006.

16          Q     So you're still open to the idea of  
17    including an effective date on the termination form  
18    for a GAA?

19          A     We're not open to that idea, no.

20          Q     Even though you don't have the form  
21    developed yet, you're excluding that as a  
22    possibility?

1           A     It's not so much the form.  It's the  
2     business processes around that effective date that  
3     we've considered.  The form is not necessarily what's  
4     driving our decisions.

5           Q     If you could turn to your surrebuttal at  
6     Lines 58 to 60.  There you testify that given the  
7     fact that ComEd's GAA form was created parallel with  
8     other utilities to maintain consistency, the GAA form  
9     should not be modified in isolation in this  
10    proceeding; correct?

11          A     That's correct.

12          Q     Can you elaborate on your familiarity with  
13    the parallel creation of the GAA form with other  
14    utilities?

15          A     The other utilities would be other  
16    utilities within Illinois and to keep in parallel  
17    with the other utilities in how they're doing  
18    business.

19          Q     So you're familiar with Ameren's GAA form?

20          A     I'm not currently familiar with Ameren's  
21    GAA form, no.

22          Q     Well, you said that we need to maintain



1 consistency; correct?

2 A That is correct. That's one of the things  
3 we're going to be looking at as we implement  
4 post-2006.

5 Q Let me help you with that process.  
6 I'm handing you what's being marked as  
7 CES Cross Exhibit 2.  
8 (Whereupon, CES Cross  
9 Exhibit No. 2 was marked  
10 for identification.)

11 BY MR. TOWNSEND:

12 Q Can you identify that?

13 A It states that it's an Ameren form for  
14 Account Agent Designation.

15 Q Are you willing to accept, subject to  
16 check, that that is Ameren's current GAA form?

17 MS. FONNER: I'm going to object to the  
18 foundation. We don't know what --.

19 MR. TOWNSEND: I'll bring in witnesses to set  
20 up a foundation if that's what you want, your Honor.  
21 But I've asked him if he'd accept it subject to  
22 check.

1                   As a matter of fact, I could probably  
2   call someone now and authenticate the document, if  
3   that's really what --.

4           MS. FONNER: I would note that this was revised  
5   at the end of 2005, so I don't know that it's  
6   relevant to the discussion of the creat- -- the  
7   original creation of the GAA forms.

8           MR. TOWNSEND: The testimony says that he wants  
9   to maintain consistency. I assume that that means  
10  with the present, not with the past.

11                   And I think that this is an  
12  appropriate question, your Honor. And, again, if you  
13  want me to call somebody to authenticate that this  
14  is, in fact, what it is. I've asked if they'll  
15  accept it subject to check.

16           MS. FONNER: That this is the current?

17           MR. TOWNSEND: Yes.

18           THE WITNESS: Yes. Subject to check, sure.

19  BY MR. TOWNSEND:

20           Q     Thank you.

21                   And does that form have an effective  
22  date.

1           A     It has a field that says effective date.  
2     What it's used for and how they process it, I'm not  
3     sure.

4           Q     Your form doesn't have that field; does it?

5           A     Our form does not have an effective date.

6           Q     And is it possible underneath that form to  
7     have one agent designated to make tariff choices and  
8     another agent designated to receive and process the  
9     bills?

10                     That is, there's one area for an agent  
11     contact information with regards to tariff selection,  
12     and then there's another field for the agent who's  
13     going to be receiving the bills; correct?

14           A     There are two separate -- there are two  
15     separate sections, and it appears one of them is for  
16     the bill produced and one of them for disconnection  
17     and credit.

18           MR. TOWNSEND:   I'd like to move into evidence  
19     CES Cross Exhibit 2.

20           MS. FONNER:   I'd object as to relevance.

21           MR. TOWNSEND:   We're back to the maintaining  
22     consistency again.

1 JUDGE DOLAN: Overruled.

2 (Whereupon, CES Cross

3 Exhibit No. 2 was admitted

4 into evidence.)

5 BY MR. TOWNSEND:

6 Q You testified in your rebuttal testimony at  
7 Line 97 that ComEd developed its GAA form; correct?

8 MS. FONNER: Can I have those line number  
9 again.

10 BY MR. TOWNSEND:

11 Q It's line 97. I don't know that -- ComEd  
12 did develop its GAA form; correct?

13 A Yes.

14 Q Was there a statewide workshop prior to the  
15 development of that form with regards to that form?

16 A I was not part of process for creating that  
17 form in 2002.

18 Q If there was not a workshop, do you think  
19 that's because ComEd did not desire the input of  
20 other market participants?

21 A No, I would not believe that would be the  
22 reason.

1           Q     When was the form developed?

2           A     The first ComEd form?

3           Q     Yes.

4           A     I believe it was out of -- it was sometime

5     in 2002 in response to part of the previous DST rate

6     case, if I remember correctly.

7           Q     In Docket 01-42 -- I'm sorry. 01-0423;

8     correct?

9           A     I assume that's the correct number.

10          Q     And you said that you believe that docket

11     concluded sometime in 2002; correct?

12          A     I believe it was sometime in 2002, correct.

13          Q     If you could refer back to CES Cross

14     Exhibit 1, the Designation of General Account Agent

15     form. Do you have that in front of you?

16          A     Yes, I have it.

17          Q     At the bottom of that, there is a 12/20/04

18     reference. Do you see that?

19          A     Yes.

20          Q     What is that?

21          A     That's the date that the form was last

22     changed.

1           Q     Was there a workshop prior to it being  
2     changed?

3           A     I was not part of the group that changed --  
4     that modified the form.

5           Q     You're not aware of any workshop; are you?

6           A     I couldn't tell you either way.

7           Q     Wouldn't you think that you would have been  
8     notified at some point during the process if there  
9     was a workshop to modify the GAA form?

10          A     I was actually in a different position  
11     during that time.

12          Q     Wouldn't you have thought that at some  
13     point when you were preparing your testimony in this  
14     proceeding that somebody would have alluded to a  
15     workshop if it had occurred?

16          A     I couldn't tell you either way.

17          Q     How many people do you suppose reviewed  
18     your testimony before you submitted it?

19          A     I worked with three folks with my  
20     testimony.

21          Q     Did any of them ever mention a workshop  
22     that occurred at any time in 2004?

1           A     Not that I remember.

2           Q     Wouldn't you have thought that if there was  
3     a workshop that they would have mentioned it to you?

4           A     They could mention things to me. I'm not  
5     really sure what you're asking.

6           Q     Well, I guess the bottom line question is:  
7     Can ComEd change this form unilaterally?

8           A     Can we? We could change it unilaterally,  
9     yes, we could.

10          Q     Now, you've acknowledged that a RES can be  
11     a GAA; correct?

12          A     A RES can also act as G and A -- GAA;  
13     correct.

14          Q     Now, let's address what you've described as  
15     the majority of the cases in which the RES is also  
16     the GAA. Okay?

17          A     Okay.

18          Q     Let's assume that the customer is already  
19     being supplied by a RES and that the customer's  
20     current RES is also the customer's current GAA.

21          A     Okay.

22          Q     Let's call that entity GAA/RES No. 1. All

1 right?

2 A Okay.

3 Q Let's further assume that the customer

4 wants to switch RESs and that, as is typically the

5 case, the customer wants the new RES to be its new

6 GAA. Okay?

7 A Okay.

8 Q Let's call that entity GAA/RES No. 2. All

9 right?

10 A 1 and 2.

11 Q The new GAA/RES No. 2 will become the

12 customer's supplier as of the customer's switch date;

13 correct?

14 A The new RES -- RES 2 will become the

15 suppliers as of the service switch date; correct.

16 Q And GAA/RES No. 2 may begin to receive

17 bills as soon as ComEd receives the GAA form;

18 correct?

19 A If they -- as soon as they become the agent

20 for that customer, they'll start receiving

21 information for that customer and the bills could be

22 that too, yes.



1           Q     Would you agree that the bills sent to  
2     GAA/RES No. 2 are not necessarily going to be in sync  
3     with the switch date for the customers switching  
4     suppliers?

5           A     GAA 2 will start receiving bills before  
6     RES 2 starts to supply power.

7           Q     As a result, it's possible that the  
8     customer's new GAA/RES could get a bill that the  
9     customer intended should go to its old GAA/RES;  
10    correct?

11                     That is, GAA/RES 2 could get a bill  
12    that customer intended to go to GAA/RES No. 1; right.

13          A     What happens with the a customer, the  
14    effect is that the GAA 2 could get that -- GAA 2  
15    could get the bill that was being created by RES 1.

16          Q     And what happens in that situation?

17          A     I don't understand what you're asking.

18          Q     Well, now you're put in the position, as  
19    ComEd, of giving information to the second RES that  
20    actually needed to go to the first RES. What  
21    typically happens when that situation arises?

22          A     From our perspective, the customer asked us

1 to change the agent on a certain date and we sent the  
2 information to that agent.

3 Q And so if the first RES is going to issue  
4 the bill, that first RES has to do what?

5 A We're going to have to walk through it  
6 again. I'm sorry. Could you ask the question again.

7 Q I'm sorry?

8 A You'll have to ask the question again, I'm  
9 sorry.

10 Q What happens when RES No. 1 is looking for  
11 the bill to send to the customer and it doesn't have  
12 the final bill to send to the customer?

13 A Let me walk through it, if I can get it  
14 correctly. There is a RES that's serving a customer  
15 in a month, and that RES will get information about  
16 usage as a RES because they supplied service. So  
17 RES 1 will get the information that they need in  
18 order to do their business.

19 The delivery service portion of the  
20 bill, in the case I think we're talking about, RES 1  
21 would not receive the delivery service portion of the  
22 bill because the agent had changed. But the RES 1,

1 the first RES that supplied service, will receive the  
2 information that they needed in order to do business.

3 Q Well, when you say in order to do business,  
4 you only mean in order to do the business of  
5 supplying the electricity --?

6 A In order --.

7 Q -- not the business of providing a  
8 combined bill to the customer; correct?

9 A In order to do business as a Retail  
10 Electric Supplier.

11 Q In order to do one component of the  
12 relationship that it previously had with the  
13 customer; correct?

14 A I guess it gets interesting whether they're  
15 on dual bill or SBO. I mean, the situation gets  
16 rather detailed. I'd have to walk through those  
17 little situations.

18 Q Well, if there are on SBO, would they  
19 receive -- would the RES receive the delivery  
20 services component of the bill?

21 A If they're on SBO, the RES would get -- the  
22 RES 1 would get the delivery service component of the

1 bill.

2 Q But in the situation where they're not on  
3 the SBO, that RES would not get the delivery service  
4 component of the bill; correct?

5 A ComEd -- in that case, ComEd would create a  
6 separate bill for its delivery services separate from  
7 the RES 1's bill for supply service.

8 Q Would you agree that that situation could  
9 cause customer confusion?

10 A At this point, the customer hasn't received  
11 any bill from anyone.

12 Q Well, that's not true; is it?

13 In the example that we were talking,  
14 the customer was receiving service both as GAA and a  
15 RES from GAA/RES No. 1; right.

16 A The customer never received either portion  
17 of the bill. They received the -- GAA got the bill  
18 for the customer, and that's how the GAA processes  
19 the bill.

20 Q GAA 2 got the bill.

21 A GAA 2 would have gotten -- could have  
22 gotten the delivery service portion of the bill.

1           Q     Before GAA, slash, RES No. 2 became the RES  
2     for that customer; correct?

3           A     Before it started fulfilling the role of  
4     the RES, it started fulfilling the role of an agent.

5           Q     So, wouldn't you think that in that  
6     situation that that could cause some customer  
7     confusion where the customer was receiving one bill  
8     from its GAA, slash, RES and then suddenly it's  
9     receiving a separate bill perhaps, or a different  
10    bill, from a GAA that isn't its RES yet?

11          A     If the RES was taking the -- if the GAA was  
12    taking the ComEd bill and putting it with the portion  
13    that the RES was receiving, then there could be  
14    confusion if that were to occur.

15                    If the original GAA/RES 1, GAA 1/RES 1  
16    was taking ComEd's portion of delivery service bill  
17    putting that together, then there could be confusion  
18    on the customer's part.

19          Q     And would you agree that such a result  
20    could effect the efficiency and, thus, the costs of  
21    the suppliers?

22          A     I don't know how exactly how it would drive

1 the suppliers' costs.

2 Q I'm not asking for an exact science as to  
3 whether or not it would impact a specific dollar  
4 amount. I'm asking as a general question, would you  
5 agree that that is an inefficiency that could  
6 increase the suppliers' cost?

7 A I agree they would have operational events  
8 they'd have to take care of. And how it would drive  
9 their costs, I don't know.

10 Q Having to address operational events is a  
11 cost correct?

12 A There is time, if nothing else, time to  
13 take care of those events.

14 Q And time is money; right?

15 A Depends on how they handle the event.

16 Q I didn't think that I'd get an argument on  
17 that question.

18 All right. Let's go into your  
19 rebuttal testimony at Lines 158 to 159. And there  
20 you say that, quote, There's simply no place in  
21 ComEd's billing system to record an agency effective  
22 date, nor do business processes and logic take into

1 account an effective date.

2 Do you see that.

3 A Yes.

4 Q Let's dissect that sentence.

5 The first part of it says there's  
6 simply no place in ComEd's billing system to record  
7 an agency effective date. Now that's just a  
8 restatement of the problem that the coalition has  
9 identified; right.

10 A There's no place in the system for -- to  
11 record the effective date.

12 Q That's what the current system is; right?

13 A That's correct.

14 Q And the next part of the sentence explains  
15 why you believe that it's inappropriate to remedy the  
16 problem, that because neither business process or  
17 logic take into account an effective date; right?

18 A What I would not -- I would not necessarily  
19 use the term "inappropriate" what I would say that  
20 it is not a trivial thing in order to take a customer  
21 effective date into account into business processes  
22 and its IT system logic, Information Technology

1 system logic.

2 Q At base, the GAA's relationship with  
3 customer is a contractual one; correct?

4 A The GAA and the customer have a contractual  
5 relationship; correct.

6 Q And the GAA also enters into a contractual  
7 relationship with ComEd; correct?

8 A If the GAA form creates a contract, I would  
9 say, yes.

10 Q Does ComEd have systems in place to  
11 recognize an effective date for other contracts that  
12 it enters into?

13 MS. FONNER: I'm sorry, can you repeat the  
14 question.

15 BY MR. TOWNSEND:

16 Q Does ComEd have systems in place to  
17 recognize an effective date for other contracts that  
18 ComEd enters into?

19 A There are effective dates on other  
20 contracts. How we process those contracts, I am not  
21 totally aware of.

22 Q Okay. Well, let's walk through a few



1 examples.

2                               When a customer wants to take service  
3 from a RES, the customer and the RES must enter into  
4 an RCDS contract with ComEd; correct.

5           A     Yes.

6           Q     Are you familiar with that form of  
7 contract?

8           A     I'm not familiar with the contracts, no.

9           Q     If I showed it to you, would you be able to  
10 identify it?

11          A     If I can take a look at it.

12                               (Whereupon, CES Cross  
13                               Exhibit No. 3 was marked  
14                               for identification.)

15 BY MR. TOWNSEND:

16          Q     I'll show you what's being marked as CES  
17 Cross Exhibit 3 and ask you if you can identify that.

18          A     I actually have not looked at this contract  
19 before, but it does say Rate RCDS Contract for  
20 Delivery Services.

21          Q     And do you have any reason to believe that  
22 that is not what it says to be?

1           A     I do not.

2           Q     And does that Rate RCDS Contract have an  
3 effective date?

4           A     It does have an effective date.

5           MR. TOWNSEND: I move for the admission of CES  
6 Cross Exhibit 3.

7           JUDGE DOLAN: Any objection?

8           MS. FONNER: No objection.

9           JUDGE DOLAN: CES Cross Exhibit No. 3 will be  
10 admitted into evidence.

11                               (Whereupon, CES Cross  
12                               Exhibit No. 3 was admitted  
13                               into evidence.)

14 BY MR. TOWNSEND:

15           Q     Are you familiar with the phrase a partial  
16 requirements customer?

17           A     Yes, I am.

18           Q     When a customer want to take partial  
19 requirements service from ComEd, is the customer  
20 required to enter into a contract?

21           A     I'm not sure.

22           Q     Okay. Well, let me show you what's being

1 marked as CES Cross Exhibit 4.

2 (Whereupon, CES Cross  
3 Exhibit No. 4 was marked  
4 for identification.)

5 BY MR. TOWNSEND:

6 Q And can you identify that?

7 A It states, Rate PR Contract Addendum  
8 Partial Requirement Service.

9 Q And does that, likewise, have an effective  
10 date?

11 A It does -- it has an effective date, yes.

12 Q And it also has a check boxes throughout  
13 the document; doesn't it?

14 A There are check boxes.

15 Q Are you familiar with the technology of  
16 filling in those types of -- those types of check  
17 boxes?

18 Electronically.

19 A It's an electronic form and checking a  
20 check on an electronic form? Yes.

21 Q That's off-the-shelf technology? It's  
22 Microsoft Word; right?

1           A     Word document type technology.

2           MR. TOWNSEND:  I move for the admission of CES  
3 Cross Exhibit 4.

4           MS. FONNER:  No objection.

5           JUDGE DOLAN:  CES Cross Exhibit No. 4 will be  
6 admitted into evidence.

7                               (Whereupon, CES Cross  
8                               Exhibit No. 4 was admitted  
9                               into evidence.)

10       BY MR. TOWNSEND:

11           Q     In your rebuttal testimony, you suggested  
12 that some of the coalition issues could be addressed  
13 in a workshop process; correct?

14           A     That's correct.

15           Q     You didn't provide any details regarding  
16 that workshop process; did you?

17           A     As how the workshop itself would work?

18           Q     Sure.

19           A     I did not provide how to structure the  
20 workshop -- what the structure the workshop would  
21 take.

22           Q     Well, you didn't specify who would sponsor

1 the workshops; did you?

2 A I did not, no.

3 Q You didn't specify when the workshops would  
4 commence; did you?

5 A I did not.

6 Q You didn't specify when the workshops would  
7 conclude; did you?

8 A I did not.

9 Q You didn't indicate whether the results of  
10 those workshops would be implemented prior to the end  
11 of the transition period; did you?

12 A I did not indicate any structure of the  
13 workshops.

14 Q When you made your suggestion regarding the  
15 workshops was it your intention to suggest that  
16 industry persistence should wait until after the end  
17 of the transition period before ComEd would make any  
18 changes to its systems?

19 A It wasn't my intent to say to wait till  
20 after the transition period to make -- it is not  
21 my -- it is not -- would not be my intent of the  
22 workshop process to wait till after to make

1 implementation.

2 I will state that implementation this  
3 year is an extremely difficult thing due to post-2006  
4 work we're already doing.

5 MR. TOWNSEND: Moving to strike the portion of  
6 his answer with regards to it being a difficult  
7 process.

8 MS. FONNER: Mr. Townsend asked specifically  
9 about his intent, and he was clarifying.

10 JUDGE DOLAN: I'm going to overrule that for  
11 what it's worth.

12 BY MR. TOWNSEND:

13 Q In your surrebuttal testimony at Lines 110  
14 to 111 you indicate that the issues raised by CES are  
15 more appropriate for informal discussions; correct?

16 A Yes.

17 Q And, again, you don't provide any detail  
18 regarding the process for these informal discussions;  
19 do you?

20 A I do not.

21 Q You don't specify who's going to initial  
22 them; do you?

1           A     I do not provide any detail.

2           Q     When they would start, when they would end,  
3 whether or not they would conclude prior to the end  
4 of the transition period, none of that is again in  
5 your testimony; is it?

6           A     I don't provide any detail, no.

7           Q     That's even after we criticized you about  
8 the workshops not providing any of those details;  
9 right?

10          A     You had made -- there were criticisms about  
11 the workshop not providing details, correct.

12          Q     Have you initialed those informal  
13 discussions?

14          A     At this point, no.

15          Q     What are you waiting for?

16          A     There are more players involved with the  
17 workshop process.

18          Q     Who all do you need to know -- who in this  
19 room do you need to notify?

20          A     There are many folks that would be  
21 interested in a workshop process and agency. I think  
22 it's, obviously, the CES coalition would be

1     interested.  I think Citizen -- I think consumer  
2     rights groups would be interested.  I think other  
3     agents would be interested.  I think the other  
4     utilities would be interested in workshop process to  
5     help define agency.

6           Q     And all of those parties either are parties  
7     to this proceeding or could be parties to this  
8     proceeding; correct?

9           A     Correct.

10          Q     Are you ready to start those informal  
11     discussions now?

12          A     As now as in tomorrow?

13          Q     Probably not tonight, but sure.

14          A     No, we would not necessarily be ready to  
15     start them tomorrow.

16          Q     Have RESs spoken to ComEd about problems  
17     with the GAA forms previously?

18          A     I would characterize it as agents.  Have  
19     had problems with the agency forms?

20          Q     The subset agents that you're talking about  
21     are RESs, though; right?

22          A     That is correct.



1           Q     And those informal contacts haven't  
2     resulted in you changing that GAA form; have they?

3           A     We have not made modifications to the GAA  
4     forms since 2004.

5           Q     So why is it that we should think that  
6     suddenly informal discussion are going to work?

7                     I withdraw the question.

8                     Let's talk about active meters.

9     Looking at your rebuttal testimony at Lines 287 and  
10    88.

11                    Let me just ask you as you're looking  
12    for that.  You've worked on the billing system for  
13    ComEd for many years; right.

14           A     I have led the group that worked on the  
15    billing system for three years.

16           Q     And you'd agree that it's important to have  
17    as much relevant information as possible as early as  
18    possible when developing an administrative system to  
19    track the customer accounts; correct?

20           A     It's necessary to have information that  
21    defines the account early; correct.

22           Q     Would you agree that it's important for the

1 active meter numbers referenced by RESs and by ComEd  
2 to be in sync?

3 A I would agree that would be a good thing to  
4 have active meter numbers in sync with the ComEd  
5 meter numbers; correct.

6 Q Would you agree that if a RES provides  
7 inaccurate information regarding the customer's meter  
8 numbers when the RES submits its DASR that the DASR  
9 could be rejected?

10 A Yes, it could.

11 And it's a meter number that the RES  
12 has to supply, not numbers. A meter number.

13 Q Well, if the RES provides an inactive meter  
14 number, then the DASR could be rejected; correct?

15 A That's correct.

16 Q You suggest that a RES could obtain the  
17 meter number from Power Path?

18 A In reference to the Web site, yes.

19 Q How frequently are the Power Path meter  
20 numbers updated?

21 That is, when a meter goes from active  
22 to inactive status, is it an immediate switch on

1     Power Path.

2           A     It would not be an immediate switch, no.

3           Q     So Power Path might not have accurate  
4     information?

5           A     It would not have information immediately.

6           Q     ComEd does provide to the RES the active  
7     meter numbers after the customer has been enrolled;  
8     correct?

9           A     We provide the active meter numbers with  
10    the first billing cycle.

11          Q     After they've been enrolled?

12          A     After they've enrolled.

13                   After service has started.   After the  
14   switch has taken place.

15          Q     What happens if the customer provides the  
16    RES with inaccurate information with regards to the  
17    meter number?

18          A     If that meter number is used for the  
19    enrollment, the enrollment would not go through.

20          Q     And that enrollment could happen or not  
21    happen during the PPO enrollment window; right?

22          A     Enrollment take place -- enrollment can

1     happen -- it could happen anytime; correct.

2           Q     Wouldn't you agree that it would be more  
3     efficient for ComEd to provide the active meter  
4     numbers prior to enrollment rather than requiring  
5     ComEd and RESs to reconcile the conflicts after the  
6     fact?

7           A     I don't see it as a matter of efficiency.  
8     It's a matter of consumer protection. The way that  
9     we recognize that the consumer has authorized it is  
10    the account number with an active meter number, and  
11    we'd like them to get the active meter number from  
12    the customer.

13          Q     But the customer might not have accurate  
14    information either; correct?

15          A     The customer -- the customer can get  
16    accurate information from ComEd by making a call to  
17    us.

18          Q     So the RES has to have the customer call  
19    ComEd in order to be able to get the information from  
20    ComEd to go to the customer and back to the RES?

21          A     It's a -- it is a consumer protection issue  
22    that we would like and would ask that the RESs get

1 the customer and the customer account number and  
2 meter number from the customer.

3 Q Or from Power Path, though; right?

4 A If they had it -- if they -- the original  
5 question you asked, can they get the active meters.  
6 If the customer gets an active meter from the  
7 customer and the account, they can access that  
8 customer's information via -- through Power Path.

9 Q But Power Path might not have up-to-date  
10 information; right?

11 A It is not immediate.

12 Q Please refer in your rebuttal testimony to  
13 Lines 321 through 323. There you state, quote, It is  
14 neither workable, nor appropriate, that ComEd should  
15 be required to notify GAAs and/or RESs every time a  
16 customer takes action that modifies the customer  
17 information.

18 Do you see that.

19 A Yes.

20 Q That's not an accurate recitation of what  
21 the coalition's testimony is -- testimony is; is it?

22 That is, the coalition has asked that

1     RESs be notified when a customer's name or taxpayer  
2     ID changes, not necessarily every time a customer  
3     takes action that modifies the customer information;  
4     correct.

5           A     I'm not sure if the coalition asked to be  
6     informed if the name or the taxpayer ID changed.  I'm  
7     not sure if that's what they asked.

8           Q     Would you be willing to accept that subject  
9     to check?

10          A     My impression was that the name and  
11     taxpayer ID had to do with defining a new customer.

12          Q     That that is the information that the  
13     coalition has asked for, is a change in name or  
14     change in the taxpayer ID, correct, not all  
15     customer's information?

16          A     I mean, subject to check, I would say, yes.

17          Q     You can appreciate the significance of a  
18     change in name or a change in the taxpayer ID; can't  
19     you?

20          A     A change in name or change in taxpayer ID  
21     could be a different customer.

22          Q     And what impact does a change in name or

1 change in customer ID have upon the ComEd billing  
2 system?

3 A Currently, that would be considered a new  
4 account for ComEd.

5 Q And that could have implications with  
6 regards to what services that customer is eligible  
7 for; correct?

8 A It's new customer. I'm not sure  
9 implications for what services are eligible for. I'm  
10 not sure what services you're referring to.

11 Q Well, for example, if it became a new  
12 customer outside of the PPO enrollment window or in a  
13 different PPO enrollment window, that could have an  
14 implication on the tariff --?

15 A I would say that that could effect that  
16 because it's a new customer; correct.

17 Q So would ComEd be willing to notify the  
18 RESs of a change in the name or taxpayer ID?

19 A I understand the issue to be name and  
20 taxpayer ID as they define what a new customer is or  
21 for the definition of new customer. ComEd is willing  
22 to talk about and to agree to a definition of new

1 customer.

2 Q I guess I don't understand.

3 So what you're suggesting is that, as  
4 opposed to providing that information to the  
5 coalition, that you're suggesting an alternative  
6 solution would be that, when a customer changes its  
7 name or its taxpayer ID, that the customer would not  
8 be classified as a new customer.

9 A I would say that we -- that is the way we  
10 currently do business, that when a taxpayer or a name  
11 changes, we consider them a new customer. My  
12 understanding is that is causing issues.

13 Q Well, understandably.

14 A And understanding the process behind what a  
15 new customer is, and ComEd is willing to talk about  
16 that and help define what a new customer should be  
17 considered when the name or taxpayer ID changes.

18 Q Fair enough.

19 Did you include that in your  
20 surrebuttal testimony.

21 A I'm not sure if it was my rebuttal or my  
22 surrebuttal. I'm not sure which testimony it was in.



1           Q     If that change does not go through on the  
2     definition of new customer in that circumstance,  
3     would you be willing to notify the RES of a change in  
4     the name or taxpayer ID?

5           A     We'd be willing to do that, yes.

6           Q     Thank you.

7                     Rebuttal testimony Lines 393 to 394.  
8     We talked about other changes here. You say it's not  
9     possible for ComEd to standardize this category of  
10    possible charges given the wide variety of other  
11    charges that may apply to a given customer.

12                    Now, what happens currently if a GAA  
13    or a RES calls up ComEd -- I guess -- let's take this  
14    situation: A GAA calls up ComEd and says, a Customer  
15    just got socked with a big other charge. What is it?  
16    What happens.

17           A     They would call the customer service center  
18    and ask for what were the details of those other  
19    charges were.

20           Q     And so ComEd provides those details after  
21    the phone call; right?

22           A     After the phone call. Or during the phone

1 call. I'm not sure which.

2 Q And is that information automatically  
3 available to the person at the call center?

4 A The call center folks can look that  
5 information up, yes.

6 Q So why can't ComEd provide that same level  
7 of detail to the customer on the bill?

8 A The bill itself has a lot to do with  
9 clarity and size of the bill. The bill currently  
10 conforms to the part -- conforms to the code. Our  
11 experience is that there's a limited amount of space  
12 in the bill in order to list other charges.

13 Q Now, you said two things. First, you said  
14 the clarity of the bill. Wouldn't it be more clear  
15 to explain what the other charge is rather than keep  
16 customers in the dark?

17 A I don't really consider to be keeping  
18 customers in the dark. There's limited space on the  
19 bill in order to display the charges.

20 Q How much space can it take?

21 A Depends how many other charges there are.

22 Q Could there be a dollar limit over which

1     you would include the additional information?

2           A     We currently conform to what was required  
3     for the billing. We believe it's the best way to  
4     bill right now.

5           Q     Do you understand why there might be some  
6     customer confusion when they get large other charges?

7           A     I can understand when customers be  
8     interested in what the other charges would be.

9           Q     And you can understand why they would call  
10    their RES or their GAA and say, Que Pasa? What's up  
11    with this other charge?

12          A     Or they call the call center directly.  
13    Yes, they ask what's up with the other charge.

14          Q     And each one of those steps adds  
15    inefficiency to the process of getting that  
16    information to the customer; correct?

17          A     It is our experience that with other  
18    charges it's best to have a conversation with our  
19    call center and other charges.

20          Q     I guess that wasn't my question.

21                   Wouldn't it be more efficient to tell  
22    the customer up-front what the other charges rather

1       than waiting for them to call you.

2               A       I'm not looking at in terms --.

3               Q       I'm asking you to look at it in terms of  
4       efficiency.

5               MS. FONNER:   I would ask that the witness be  
6       allowed to answer.

7               THE WITNESS:   There are multiple parts of  
8       serving a customer.   One of them is efficiency and  
9       one of them is customer satisfaction.

10                       It's our experience that with other  
11       customer charges, the conversation with the call  
12       center representative is generally better.

13       BY MR. TOWNSEND:

14               Q       Do you have a customer survey to back that  
15       up?

16               A       I'm not aware of what we have.   I know what  
17       we do in the call center and how we handle the calls  
18       in the call center.

19               Q       So that's just your feeling that that's --?

20               A       It's my opinion.

21               Q       You would agree that it's less efficient,  
22       though; correct?

1           A     It could be less efficient.

2           Q     Okay.  Let's talk about Utility  
3     Consolidated Billing and purchase of receivable just  
4     briefly.

5                     In your rebuttal testimony, Page 25,  
6     Lines 553 to 554, you suggest that previous  
7     high-level estimates -- I assume that's estimates to  
8     revise ComEd's systems to accommodate Utility  
9     Consolidated Billing and purchase of receivable  
10    program -- are in the range of 4 to \$6 million;  
11    correct.

12          A     That's correct.

13          Q     And was I right about that assumption, that  
14    you're talking about the cost to revise the systems  
15    to accommodate both consolidated billing and  
16    purchase --?

17          A     And POR.  Yes.

18          Q     What's the basis for those high-level cost  
19    estimates?

20          A     There's a partial list of business  
21    processes that are in the testimony that would have  
22    to be changed or modified, and there's like IT

1       systems that would have to be changed or modified.

2       Those are what the basis of the estimate would be.

3           Q     You didn't provide any work papers with  
4       your testimony; did you?

5           A     No, I did not.

6           Q     Did you develop work papers in coming up  
7       with that estimate?

8           A     The estimate was made in 2002.

9           Q     So ComEd has been considering the idea of  
10      Purchase of Receivables and the Utility Consolidated  
11      Billing since 2002?

12          A     I believe we were asked to consider it and  
13      the cost of what it would be back in 2002.

14          Q     So you -- have you been having ongoing  
15      internal discussions to consider that possibility?

16          A     We have not had any active internal  
17      discussions to take a look at Utility Consolidated  
18      Billing or Purchase of Receivables.

19          Q     Not even in response to our testimony?

20          A     We did not look at that -- we did not look  
21      at either one of these two things in response to your  
22      testimony.  No.

1           Q     And what you've suggested in your testimony  
2     is that the IT structure would have to be altered,  
3     not that it couldn't be altered; correct?

4           A     That would have to be altered; correct.

5           Q     Have you discussed this proposal with  
6     anyone at PECO or PSEG?

7           A     The Illinois proposal through UCB POR? I  
8     have not discussed the Illinois proposal of UCB POR  
9     with PSEG or PECO.

10          Q     Have you discussed Utility Consolidated  
11     Billing or Purchase of Receivables as a general topic  
12     with anyone inside PECO or PSEG?

13          A     Back at the time of the merger, I did  
14     discuss that with them, yes. With PECO, not with  
15     PSEG. There are two companies. With PECO.

16          Q     And have you had any discussions with PSEG  
17     about Utility Consolidated Billing?

18          A     We have not had discussions with PSEG.

19          Q     Would ComEd object to immediately  
20     initiating a forum to further discuss the concept of  
21     Utility Consolidated Billing and Purchase of  
22     Receivables?

1           A     I would leave that Paul Carmine and whether  
2     ComEd would be interested in talking about that.

3           MR. TOWNSEND: Your Honor, I just have one  
4     cleanup. I'm not sure if CES Cross Exhibit No. 2 was  
5     admitted into evidence.

6           JUDGE DOLAN: It was not.

7           MR. TOWNSEND: If I can move that into  
8     evidence, please.

9           JUDGE DOLAN: Any objection?

10          MS. FONNER: No.

11          JUDGE DOLAN: All right. CES Cross Exhibit  
12     No. 2 will be admitted into the record.

13                         (Whereupon, CES Cross  
14                         Exhibit No. 2 was admitted  
15                         into evidence.)

16          MR. TOWNSEND: And with that, I have no further  
17     questions.

18          JUDGE DOLAN: Any redirect?

19          MS. FONNER: Could we have a minute?

20          JUDGE DOLAN: Certainly.

21                         (Whereupon, a brief  
22                         recess was taken.)



1 JUDGE DOLAN: Back on the record.

2 REDIRECT EXAMINATION

3 BY

4 MS. FONNER:

5 Q Mr. Meehan, Mr. Townsend asked you some  
6 questions about ComEd's DGAA, the Designation of  
7 General Account Agent. Is the form itself and  
8 whether or not there is a box for an effective date,  
9 does that drive the business processes and  
10 information technology systems of ComEd?

11 A Would that drive the information  
12 technology? It's not the form that drives the  
13 business changes. It's what's being asked on the  
14 form for us to do.

15 Q And are ComEd's business processes and IT  
16 applications set up to handle an effective date for  
17 an agent or a distinction between types of agents?

18 A No, they are not. The systems are not set  
19 up to handle that.

20 Q Mr. Townsend showed you a couple of  
21 different contracts Rate PR and Rate RCDS that  
22 contain a blank regarding effective date. Are these

1 the -- do these contracts, are they between ComEd and  
2 ComEd's retail customers?

3 A Yes, they are.

4 Q Is that different than a DGAA form that  
5 ComEd receives regarding an agent's relationship with  
6 a customer?

7 A It is different.

8 Q How does it differ?

9 A The first two forms were set up in response  
10 to supporting open access, and we handle those kinds  
11 of requests separately from the rest of the business  
12 in order to support open access.

13 Q Couldn't you simply take that same system  
14 and use it for the DGAA?

15 A The business -- the customer  
16 accountabilities for the D -- that the DGAA -- that  
17 the GAA performs are within the core ComEd billing  
18 system. They are not within the ComEd open access  
19 system.

20 Q Mr. Townsend went through an example in  
21 which a customer was taking service where a  
22 particular RES that also happened to be a GAA for

1     that customer and supplier No. 2 switched that  
2     customer to RES supply through use of a GAA form. Do  
3     you recall that hypothetical?

4           A     I recall the hypothetical.

5           Q     Would a RES have to be -- an agent have to  
6     be a GAA for a customer in order to put that customer  
7     on RES supply?

8           A     A RES can put someone on their supply  
9     without having to be an agent.

10          Q     And with respect to any confusion that a  
11     customer might have by getting a bill from an entity  
12     that is not serving as their Retail Electric Supplier  
13     yet, is that something that you believe could be  
14     easily clarified --?

15          A     Yes.

16          Q     -- in that agent's discussion with the  
17     customer prior to the switch date?

18          A     Yes. If the agency form was not submitted  
19     until after the switch date, that would avoid the  
20     issue -- the billing issue that was described.

21          Q     I want to talk briefly about active meters.  
22     You mentioned that requiring a RES to provide an

1 active meter for a particular account was a matter of  
2 customer protection. What did you mean by that?

3 (Change of reporters.)

4 THE WITNESS: In open access, in order to gain  
5 access to a customer's information, the customer  
6 needs to hand out their account number and one active  
7 meter.

8 That's to ensure that the customer's  
9 particular information is not given to anyone that  
10 asks for it. It's a consumer-protection issue that  
11 was put in for open access.

12 Q And what would be the danger of having  
13 somebody call up and ask for that information without  
14 actually having an active meter that is referring to  
15 that particular customer account?

16 A If the information was given out without  
17 the correct accounting number or active meter, the  
18 information can go to anyone even folks that a  
19 customer that we were not intending that information  
20 to go to.

21 MS. FONNER: That's all I have, your Honor.

22 JUDGE DOLAN: Any recross?

1 MR. TOWNSEND: Yes, your Honors.

2 CROSS EXAMINATION

3 BY

4 MR. TOWNSEND:

5 Q You're revising your billing systems to  
6 accommodate all post-2006 rates, correct?

7 A That's correct.

8 Q Not just open-access rates, correct?

9 A All rates for the post-transition  
10 environment, correct.

11 Q Bundled and unbundled?

12 A Both delivery service rates and new supply  
13 rates, correct.

14 Q The situation where a RES is looking to  
15 obtain active meter numbers, it's not just a question  
16 of trying to find the one active meter for a  
17 customer, correct, RESs try to find all the active  
18 meters for the customers?

19 A If they could.

20 Q And that's actually what you provide after  
21 the first billing period, it's all of the active  
22 meter numbers?

1           A     That's correct.

2           Q     And you don't provide all of the active  
3     meter numbers prior to enrollment of the customer,  
4     correct?

5           A     If they're requested and requested with an  
6     account in one active meter number, that information  
7     can be gained.

8           Q     But your standard process is not to provide  
9     that information at the time of enrollment, correct?

10          A     That's correct.

11          Q     And so at the time of enrollment, the RES  
12     will have an active meter number for the customer,  
13     correct?

14          A     That's correct.

15          Q     And the danger actually is that the RES  
16     might provide you with an inactive meter in which  
17     then the customer would not be allowed to have their  
18     data server processed, correct?

19          A     That's correct.

20          Q     So when you talk about customer protection,  
21     would you agree that there's not a customer  
22     protection issue when a RES provides an inactive

1 meter number for a customer, but rather that is  
2 likely just confusion on part of the RES?

3 A No, the whole reason the active meter  
4 number is requested so we can have some confidence  
5 that the customer, that the RES has gotten the  
6 information from the customer.

7 I would not assume that an inactive or  
8 incorrect meter number is necessarily a clerical  
9 error. It's the consumer protection that's involved.

10 Q Actually, in your rebuttal testimony, you  
11 suggest that the information could be obtained from  
12 the Powerpath web site, again, right?

13 A If you have the customer's account number  
14 and an active meter number.

15 Q Or if you have the customer's information  
16 and a recently inactive meter number, correct?

17 A I'm not sure.

18 Q Well, let's take that example. Okay?  
19 Because you told me that Powerpath is not updated on  
20 a regular basis, right?

21 A It is not updated immediately, correct. Is  
22 what was said

1           Q     So what could happen is that the RES gets  
2     an inactive meter number from the customer, and then  
3     goes to Powerpath to try to find all of the active  
4     meter numbers, and that inactive meter -- strike  
5     that.

6                     Can you envision a situation where the  
7     meter goes inactive and then that meter number is  
8     provided by the customer to the RES, the RES then  
9     takes that inactive meter number and goes on  
10    Powerpath in order to be able to get the information  
11    for the customer?

12          A     There is a situation -- I can see a  
13    situation where a customer could give a RES an  
14    inactive meter number.

15          Q     And that inactive meter number could still  
16    allow the RES access to Powerpath because Powerpath  
17    hasn't been updated?

18          A     I would have to take a look at it in more  
19    detail and the logic of how that works, how that  
20    protection works. I don't know particularly how that  
21    works.

22          Q     How can it be anything different?



1           A     I have to take a look at how the web site  
2 works, how that part of it works.

3           Q     Why?

4           A     There are different business or logic  
5 checks that could occur. And I'm not totally  
6 familiar with the current logic that would be within  
7 those checks.

8           Q     So it is possible that the customer could  
9 provide the RES with a recently inactive meter, that  
10 RES would go to Powerpath, believe that it has an  
11 active meter, because it's able to get on Powerpath,  
12 submit that meter in number to ComEd and that answer  
13 would be projected?

14          A     Subject to the timing, yes, that could be  
15 possible.

16          Q     That could have real financial  
17 consequences, couldn't it?

18          A     Under? Under?

19          Q     If the customer isn't able to switch to the  
20 RES?

21          A     It would -- it could prevent the switch,  
22 yes.

1           Q     And that has real dollar impacts on  
2 customers, right?

3           A     It would have an impact on how the customer  
4 gets their service, correct.

5           Q     And it would be an inefficiency in the  
6 system, correct?

7           A     It's a consumer protection issue again.

8                     Our consumer-protection issues is --

9           Q     I withdraw the question.

10          MR. TOWNSEND: No further questions.

11          MS. FONNER: Nothing further.

12          JUDGE DOLAN: Thank you, Mr. Meehan.

13                     You are excused.

14                             (Witness excused.)

15          JUDGE DOLAN: All right since Mr. Hill has been  
16 here all day, we have to at least put him on to get  
17 him started.

18          MR. HILL: That's fine with me.

19          MS. SCARSELLA: Your Honors, prior to putting on  
20 Mr. Hill, the Company has stipulated to five  
21 responses to Staff data requests.

22                     And at this time, we would like to

1       admit them into the record.

2               MR. BERNET: Carla, are you going to read those  
3       numbers?

4               MS. SCARSELLA: Yes.

5               MR. BERNET: Before we get started, can I just  
6       a couple preliminary things.

7                       We reached an agreement yesterday on  
8       the modification to a revenue credit number, a  
9       revenue requirement deduction relating to new  
10      business. And that resulted in a change of the number  
11      that was in Mr. Hill's surrebuttal testimony from  
12      \$12.5 million to \$13.7 million.

13                      So we revised his surrebuttal  
14      testimony to that effect. I have that in hard copy  
15      here today.

16                      The other issue that has come up is,  
17      as you know, the issue concerning the audit has been  
18      taken out of testimony. Mr. Hill's testimony briefly  
19      referred to the audit in his rebuttal and  
20      surrebuttal. So the revised testimony that we have  
21      today also has those redactions.

22               JUDGE DOLAN: Okay.

1           MR. BERNET: The other thing, Mr. Hill is  
2   diabetic so we may need to take a break. He'll let  
3   us know.

4           JUDGE DOLAN: Staff data requests.

5           MS. SCARSELLA: Staff would move into the  
6   record, Staff Cross-Exhibit 3, which is Company  
7   Response to PL staff data request PL 2.01 which has a  
8   confidential attachment.

9           JUDGE DOLAN: DL 01.

10          MS. SCARSELLA: DL 3.01 which has a confidential  
11   attachment as well.

12                   ICC Staff Cross-Exhibit 4, which is  
13   the Company response to TEE, 2.09. And that also has  
14   a confidential attachment.

15                   ICC Staff Cross-Exhibit 5, which is  
16   the Company response to TEE 7.04, which also has a  
17   confidential attachment.

18                   ICC Staff Cross-Exhibit 6, which is  
19   Company response TEE 17.02.

20                   And ICC Staff Cross-Exhibit 7, which  
21   is a Company response TEE 14.01.

22                   Since the first three cross-exhibits

1     have confidential attachments, I will not pass them  
2     out to the rest of the parties this afternoon.

3                     With respect to ICC Staff  
4     Cross-Exhibit 3, only, it does not have a  
5     confidential attachment.

6                     So it's only 4 and 5. I will e-mail  
7     the parties.

8             JUDGE DOLAN: Any objection?

9             MR. BERNET: No objection.

10            MS. SCARSELLA: The confidential version, I will  
11     e-mail to the parties. You should receive them. I  
12     will pass out the remaining this afternoon.

13            JUDGE DOLAN: Then we have Staff Cross-Exhibit  
14     No. 3, which is Data Request DL 3.01 is admitted into  
15     the record.

16                     Staff Cross-Exhibit No. 4, which is  
17     TEE 2.09 confidential and that is admitted into the  
18     record.

19                     Staff Cross-Exhibit No. 5, which is  
20     data request TEE 7.04 confidential is admitted into  
21     the record.

22                     Staff Cross-Exhibit No. 6, which is

1        TEE 17.02 is admitted into the record.

2                                And Staff Cross-Exhibit No. 7, which  
3        is data request TEE 14.01 is admitted into the  
4        record.

5                                (Whereupon, Staff Cross-Exhibit  
6                                Nos. 1, 2, 4, 5, 6 and 7 with  
7                                confidential attachments and  
8                                Staff Cross-Exhibit 3 without  
9                                confidential attachments were  
10                               admitted into evidence.)

11                MR. BERNET:    Your Honors, we, in order to  
12        streamline things reached an agreement to stipulate  
13        to the admission of Mr. Hill's testimony.    So I'll  
14        just read into the record what that testimony is.

15                                ComEd Exhibit 36 revised is  
16        surrebuttal of Jerry -- Jerome P. Hill along with  
17        schedules 1 through 10 with the exceptions of  
18        schedules 1 and 3, which will be revised and  
19        submitted before the record closes.

20                                Those schedules are not being offered  
21        today because of minor modifications to the revenue  
22        requirement and the calculation of the settlement

1 amount that we discussed before we went on the  
2 record?

3 JUDGE DOLAN: Okay. So let me just before you  
4 go any further, you said schedules 1 through 10?

5 MR. BERNET: Excluding 1 and 3.

6 JUDGE DOLAN: So we have 2, 4, 5, 6, 7, 8, 9  
7 and 10?

8 MR. BERNET: (Shaking head up and down.)

9 JUDGE DOLAN: Are any of those marked  
10 confidential?

11 MR. BERNET: No.

12 We are also stipulating to the  
13 admission of ComEd Exhibit 19 revised, which is  
14 revised to remove some testimony and is available  
15 here in the hearing room, as is Mr. Hill's revised  
16 surrebuttal testimony.

17 We're also offering 18 schedules  
18 attached to ComEd 19 revised, which is Mr. Hill's  
19 rebuttal testimony.

20 Finally, we are offering ComEd  
21 Exhibit 5 corrected along with Exhibits 5.1 and 5.2  
22 and that is Mr. Hill's direct testimony.

1 JUDGE DOLAN: Okay. Does anybody have an  
2 objection?

3 (No response.)

4 Then we have ComEd Exhibit No. 5  
5 corrected with attachments 5.1 and 5.2?

6 MR. BERNET: Yes. And just so we're clear, the  
7 schedules 5.1 and 5.2 were originally filed with  
8 Mr. Hill's testimony on August 31, 2005 on e-docket.

9 On December 14th, we filed the  
10 corrected direct testimony of Mr. Hill and updated  
11 certain schedules that were originally filed.

12 So to get the full package of all the  
13 schedules of Mr. Hill's testimony, you have to have  
14 both what was filed on August 31st and what was  
15 updated on the 14th of December. And I can list the  
16 schedules that were updated, if that would be  
17 helpful.

18 JUDGE DOLAN: Why don't you read those.

19 MR. BERNET: The following schedules were  
20 updated in ComEd's December 14, 2005 filing of errata  
21 with respect to Mr. Hill's testimony. These are  
22 schedules that are attached to Exhibit 5.1.



1                   Schedules A2, A4, A5, B1, B2, B2.1,  
2   B2.4, B7, B10, C1, C2, C2.1, C2.4, C2.6, C2.7, C2.11  
3   and C5.4.

4                   Also Exhibit 5.2 was also modified in  
5   the filing on December 14th, and that errata effected  
6   the following work papers, WPB 2.4, WPC, 2.1, and  
7   WPC 2.11. And the e-docket numbers associated with  
8   that errata are 158582 through 158584.

9                   And I'll go back. The e-docket  
10   numbers associated with the errata on schedule or  
11   Exhibit 5.1 are e-docket numbers 158563 through  
12   158580.

13                   I tender Mr. Hill for cross.

14                   JUDGE DOLAN: Let me get all this into the  
15   record then.

16                   So you said we had 5.0 corrected with  
17   attachments, 5.1, 5.2, 5.1 on December 14 errata  
18   schedules A2, A4, A5, B1, B2, B2.1 B2.4, B7. C1.

19                   MR. BERNET: B10.

20                   JUDGE DOLAN: Okay. And C1, was it 1.2?

21                   MR. BERNET: C2 and then C2.1.

22                   JUDGE DOLAN: Okay. So there is just C1, C2,

1 C2.1, C2.4, C2.7, C2.11 and C5.4.

2 MR. BERNET: And C2.6.

3 JUDGE DOLAN: Okay. C2.6.

4 MR. BERNET: Jerry Hill bingo.

5 JUDGE DOLAN: Then we had attached to 5.2, we  
6 had WPB 2.4, WPC 2.1, and WPC 2.11 also corrected.

7 MR. BERNET: That's correct.

8 (Whereupon, ComEd Hill Exhibit  
9 Nos. 5.1. Schedules A2, A4, A5,  
10 B1, B2, B2.1, B2.4, B7, B10,  
11 C1, C2, C2.1, C2.4, C2.6, C2.7,  
12 C2.11 and C5.4. Exhibit 5.2  
13 WPB 2.4, WPC, 2.1, and  
14 WPC 2.11. were admitted into  
15 evidence.)

16 JUDGE DOLAN: All right. So those are all  
17 admitted. And we have ComEd Exhibit 19 revised with  
18 Schedules 1 through 18.

19 MR. BERNET: That's correct.

20 JUDGE DOLAN: Those are admitted.

21

22

1 (Whereupon, ComEd Hill Exhibit  
2 Nos. ComEd Exhibit 19 revised  
3 with Schedules 1 through 18  
4 were admitted into evidence.)

5 JUDGE DOLAN: Then we have ComEd Exhibit 36  
6 revised with Schedules 2, 4, 5, 6, 7, 8, 9 and 10.

7 MR. BERNET: That's correct.

8 JUDGE DOLAN: Those are admitted.

9 (Whereupon, ComEd Hill Exhibit  
10 Nos. 36 revised with Schedules  
11 2, 4, 5, 6, 7, 8, 9 and 10 were  
12 admitted into evidence.)

13 JUDGE DOLAN: All right. Now we're ready for  
14 cross.

15 MR. GIORDANO: Your Honor, the Attorney General  
16 and Staff have graciously agreed that if it's okay  
17 with you, we could go first because we only have  
18 about 10 minutes.

19 JUDGE DOLAN: That's fine.

20 (Witness sworn.)

21

22

1 JEROME P. HILL,  
2 called as a witness herein, having been first duly  
3 sworn, was examined and testified as follows:  
4 CROSS-EXAMINATION  
5 BY  
6 MR. GIORDANO:  
7 Q Good evening, Mr. Hill?  
8 A Good evening, Pat.  
9 Q I would like to refer you to Page 7,  
10 Lines 135 to 37 of your surrebuttal testimony.  
11 MR. BERNET: What are those lines, Pat?  
12 MR. GIORDANO: Let's go back to Page 6, start  
13 with Line 134, the last line on Page 6 of the  
14 surrebuttal, ComEd Exhibit 36.0.  
15 You testify there, don't you, that  
16 reflecting the June 2006 charges in the delivery  
17 service rates approved in Docket No. 01-0423, ComEd's  
18 Pro Forma 2005 revenues are \$1.579 billion; isn't  
19 that correct.  
20 A Yes, on the 2004 billing determinants, yes.  
21 Q So the answer is yes to my question,  
22 correct?

1           A     Yes.  If the 2004 billing determinants were  
2     applied to the final stage of the rates set in Docket  
3     01-0423, they would produce a revenue in 2004 of the  
4     1 billion 579.

5           Q     Okay.  And those are ComEd's own  
6     calculations, correct?

7           A     Yes, they are.

8           Q     Now, does that mean -- that means, doesn't  
9     it, that at the delivery services rates that would be  
10    in effect on January 1, 2007, if the Commission did  
11    not change ComEd's delivery services rates, ComEd's  
12    revenue requirement would be \$1.579 billion, correct?

13          A     Only by coincidence.

14                     Remember it's billing determinants and  
15    rates.

16          Q     Right.  But the calculation would be that  
17    ComEd's revenue requirements based on those billing  
18    determinants?

19          A     That's correct.

20          Q     And the 2004 test year, those are the  
21    billing determinants that you are presenting here to  
22    the Commission, correct?  The revenue requirement

1     would be 1.579 billion based on ComEd's current  
2     delivery service rates, correct?

3           A     That's the only distinction I was making,  
4     Pat, 2004 billing determinants, right.

5           Q     Those are the ones you present in this  
6     case. You haven't presented any other billing  
7     determinants other than the 2004; is that right?

8           A     That's true.

9           Q     So the answer to my question is: Yes, the  
10    revenue requirement would be \$1.579 billion based on  
11    the June 2006 delivery service tariffs, correct?

12          A     It would be the revenue, not the revenue  
13    requirement. The revenue requirement is 1 billion  
14    8 -- the revenue requirement we are proposing in this  
15    proceeding is 1.863 million 796 thousand. The  
16    revenues that would be produced using 2004 billing  
17    determinants in the June 6th DST charges would be 1  
18    billion 579. Those would never happen in actual  
19    space. That revenue will never happen in actual  
20    space.

21          Q     Well, you don't know that.

22                    You don't know what the Commission is

1 going to decide in this case, correct?

2 A Even if the Commission were to decide to  
3 continue to have the DST rates of June 6, the  
4 revenues only by coincidence, as I said, would be 1  
5 billion 579.

6 Q But they would be 1 billion 579 based on  
7 the billing determinants and other factors as you  
8 presented in this case; is that correct?

9 A Yes. And it's not the revenue requirement.

10 Q I understand it's not the ComEd proposed  
11 revenue requirement. I understand that.

12 A Correct.

13 Q So if the Commission did not change ComEd's  
14 current delivery service tariffs in any respects,  
15 ComEd's revenue requirement would be increased from  
16 1.507 billion, which was what was approved in 2003 to  
17 1.579 billion a \$72 million increase, correct?

18 MR. BERNET: Hold on a second.

19 Are you asking about a revenue  
20 requirement or revenues?

21 MR. GIORDANO: I'm asking if the Commission  
22 took action and said, "We are not going to change

1 ComEd's tariffs." Okay? At all; delivery service  
2 tariffs. And then they also established a revenue  
3 requirement based on that decision that they weren't  
4 going to change their -- those tariffs; isn't it true  
5 that the revenue requirement in that order would be  
6 \$1.579 billion, correct? Assuming that that 1.579  
7 billion could be justified, but that's what you would  
8 get based on the tariffs that are currently in  
9 effect, correct?

10 MR. BERNET: Objection to form.

11 MR. GIORDANO: I think Mr. Hill understands it.

12 MR. BERNET: It's a compound question. There are  
13 about four questions in there.

14 MR. GIORDANO: I think that was caused by your  
15 initial objection, but I can rephrase it if you want  
16 me to.

17 JUDGE DOLAN: Go ahead and rephrase it.

18 BY MR. GIORDANO:

19 Q Let me ask it this way: If the Commission  
20 did nothing other, in this case, and did not change  
21 ComEd's delivery service tariffs, you already  
22 testified based on the billing determinants and other



1 factors in the 2004 test year that the delivery  
2 service revenues would be \$1.579 billion, correct?

3 A Based on the 2004 billing determinants and  
4 the Commission did not change its last current  
5 approved rates, based on those two variables and the  
6 formula, it would produce the revenues of 1.579, yes.

7 Q Okay. And isn't it true that that 1.579  
8 billion in delivery service revenues is \$72 million  
9 higher than the currently approved delivery service  
10 revenue requirement for ComEd of \$1.507 billion that  
11 was approved in Docket No. 01-0423? And I can show  
12 you that order, if you need it.

13 A I don't contest the approximation of the  
14 number. The 1.507 number you refer to is the revenue  
15 requirement from 01-0423 based on a 2000 test year.

16 Q Right.

17 So it's true, is it not, that the  
18 1.579 billion, that would be generated based on your  
19 2004 test year and billing determinants is  
20 \$72 million higher than the approved revenue  
21 requirement based on the 2000 test year, correct?

22 MR. BERNET: Objection. Objection. That

1 mischaracterizes Mr. Hill's testimony.

2 MR. GIORDANO: I don't believe it did in any  
3 respect.

4 MR. BERNET: His testimony says reflecting the  
5 June 2006 charges, not 2004.

6 MR. GIORDANO: He was the one referring to the  
7 2004 test year, that's why I put it into the  
8 question.

9 You are right, counsel, the 2006  
10 charges, that's part of the point of my question.

11 MR. BERNET: That's what you didn't ask.

12 MR. GIORDANO: But he referred to the 2004 test  
13 year. I think it's a proper question.

14 JUDGE DOLAN: I will overrule the objection.

15 THE WITNESS: Pat, the only thing I can agree  
16 to is that the final set of DST rates authorized by  
17 the Commission in 01-0423 applied to the 2004 billing  
18 determinants and the mix of those determinants by  
19 customer classes as they actually occurred in 2004,  
20 the only thing I can agree to is that will produce a  
21 mathematical result of 1.579.

22 It is not reflective in any way, shape

1 of form of a revenue requirement for 2004, or 2006,  
2 or 2007. And it likely will not even be the exact  
3 number if you were just to apply the June '06 rates  
4 to billing determinants in '07 with the result of  
5 revenue would become.

6 Q But you're currently approved revenue  
7 requirement is 1.507 billion, correct?

8 A Based on a 2000-year cost, yes.

9 Q And that's the current order that's in  
10 effect, correct?

11 A That's correct.

12 Q And in order to generate \$1.507 billion  
13 based on the 2004-test year, you would have to reduce  
14 your rates by \$72 million, correct?

15 A In order for some set of rates to produce 1  
16 billion 507, it seems logical to me that the rates  
17 would have to be decreased in order to produce a  
18 revenue level of that in 2007.

19 Q By \$72 billion -- million, correct?

20 A Well, as a function of what the billing  
21 determinants would be for '07. It might be that. It  
22 might be more. It might be less.

1           Q     But based on the 2004-test year and billing  
2     determinants that you are using in this case, it  
3     would have to be reduced by \$72 million, correct?

4           A     If that was the billing determinants number  
5     to be used, yes.

6           Q     Those are the billing determinants you are  
7     presenting in this case, correct?

8           A     Yes.

9           Q     Okay. So if the Commission did not change  
10    ComEd's delivery tariffs in any respect, ComEd would  
11    receive a delivery service revenue requirement  
12    increase from the amount authorized by the ICC in  
13    2003 of \$72 million or approximately 5 percent,  
14    correct?

15           MR. BERNET: Objection; asked and answered.  
16    We've been over this several times.

17           MR. GIORDANO: I don't think it was.

18                     It's the last question along these  
19    lines.

20           JUDGE DOLAN: Can you read back the question.

21                             (Whereupon, the record was read  
22                             as requested.)

1 MR. BERNET: Withdraw the objection.

2 JUDGE DOLAN: Okay.

3 Go ahead and answer.

4 THE WITNESS: The Commission would not be  
5 authorizing an increase in revenue requirement.

6 All it is is the revenue requirement  
7 that it authorized in the year 2000 in Docket  
8 01-0423.

9 BY MR. GIORDANO:

10 Q So you are saying then that ComEd can  
11 generate more than that, more than that revenue  
12 requirement, and the Commission should not take any  
13 action with respect to that? Is that what you're  
14 saying? If they don't act, they should just  
15 generate -- you can generate more than that revenue  
16 requirement and the Commission shouldn't take action?  
17 Is that what you're saying?

18 A No, I was answering your question, which  
19 was, Did the Commission increase your revenue  
20 requirement by \$72 million or it did not. And my  
21 answer is no, and it continues to be no.

22 Q But you would -- okay.

1                   We don't need any more on that line.

2                   Now, ComEd's delivery service revenue  
3   requirement approved in September of 1999 was \$1.256  
4   billion, correct?

5           MR. BERNET: Do you have that order, Pat?

6           MR. GIORDANO: Yes.

7           THE WITNESS: Yes, I believe it's the finding of  
8   the Ordering Paragraph 6, and the Commission ordered  
9   for Docket No. 99-0117 states for purposes of this  
10   proceeding, ComEd's delivery services revenue  
11   requirement is 1 billion 255, 853 thousand.

12          Q     So this means, doesn't it, that if the  
13   Commission did not change ComEd's delivery services  
14   tariffs in this case based on the 2004 billing  
15   determinants, ComEd would collect delivery services  
16   revenues in the year 2007 that were \$323 million or  
17   26 percent greater than the delivery service revenue  
18   requirement approved by the Commission in September  
19   of 1999?

20          A     May I make sure I'm clear with your  
21   question. Can I put it in my words and see if this  
22   is what you mean?

1 Q (Shaking head up and down.)

2 A If ComEd were to receive revenues in 2007  
3 based on the rates that it set in October 01-0423,  
4 would those revenues produce or would that revenue  
5 amount be, I forget your original number 300  
6 something?

7 Q I was referring to the prior docket  
8 99-0117?

9 A 300-some odd million more than the 1.256  
10 million from order 99-0117?

11 Q Right.

12 A Mathematically, yes.

13 Q You accept, subject to check, that that's  
14 26 percent higher?

15 A Yeah, I'll accept it subject to check.

16 Q And since you brought it up, if we compare  
17 with the revenue requirement approved in 01-0423, if  
18 the Commission took no action on the delivery service  
19 tariffs based on the 2004 billing determinants, ComEd  
20 would have \$72 million more collected in 2007 in  
21 delivery service revenues than the revenue  
22 requirement approved in that docket, 01-0423?

1           MR. BERNET: Object to the form. It asks about  
2 revenues and revenue requirements. It's multiple  
3 questions in one. I also think it's been asked and  
4 answered.

5           MR. GIORDANO: I disagree. The form was  
6 correct.

7           JUDGE DOLAN: Can you try to rephrase it,  
8 Mr. Giordano please.

9 BY MR. GIORDANO:

10           Q     So referring you to the revenue requirement  
11 of 1.507 million approved by the Commission in  
12 01-0423 in 2003, and referring you to the 2004 test  
13 year and the revenues that would be generated by the  
14 2004 billing determinants, isn't it true that ComEd  
15 in 2007, based on those assumptions, would generate  
16 \$72 million more than the revenue requirement  
17 approved by the Commission in 01-0423?

18           A     Given those assumptions, the math seems  
19 right.

20           Q     Would you accept, subject to check, that's  
21 approximately 5 percent more?

22           MR. BERNET: 5 percent more than than what?



1           MR. GIORDANO: 72 million on 1.570 million.

2           THE WITNESS: Sounds close.

3           MR. GIORDANO: Thank you.

4                   I have no further questions.

5           JUDGE DOLAN: Thank you.

6           MR. GIORDANO: Can I ask one question, your

7 Honor, involving another matter just real quick?

8           JUDGE DOLAN: Okay.

9           MR. GIORDANO: It's not funny. We just have a

10 witness, David McClanahan, where there is no

11 cross-examination, and we need to submit an

12 affidavit. Could we submit that when we present our

13 other BOMA witnesses? He's scheduled for Thursday

14 but can we do it on Monday?

15           JUDGE DOLAN: Yeah, that's fine. That's no

16 problem as long as we get it in before the end of

17 this hearing and we are not closing the record

18 because of the questions from the commissioners.

19                   Just as long as we get it in before

20 the close.

21           MR. GIORDANO: Thank you.

22           JUDGE DOLAN: Are we going to try to get some of

1 the short ones out of the way?

2 MR. BRADY: We prefer to go next. We still  
3 have some witnesses here from Springfield that would  
4 like to go home.

5 JUDGE DOLAN: How long are you estimating?

6 MR. BRADY: About an hour.

7 MS. SCARSELLA: I can do my questions in the  
8 morning if Mr. Brady goes this afternoon.

9 JUDGE DOLAN: We were calling it a night at  
10 7:00. So would that give you enough time to get  
11 through your questions?

12 MR. BRADY: Yes.

13 JUDGE DOLAN: Why don't we do it that way then.  
14 Go ahead and proceed.

15 CROSS EXAMINATION

16 BY

17 MR. BRADY:

18 Q Good evening, Mr. Hill.

19 A Good evening.

20 Q My name is Sean Brady. My co-counsel is  
21 Carla Scarsella. Ms. Scarsella will be addressing  
22 questions to you about incentive compensation and

1       maybe some other accounting matters.

2                       My questions to you is about general  
3       plant, intangible plant, as well as, AG expenses.

4               A       Okay.

5               Q       Do you have your surrebuttal testimony in  
6       front of you?

7               A       I do.

8               Q       Can you turn to Page 15 of that testimony?

9               A       Okay.

10              Q       Right around Lines 325 to 327, there's a  
11       question there about determining the jurisdictional  
12       portion of common costs.

13                      Do you see that?

14              A       I do.

15              Q       And in your response that follows, you  
16       layout two generally accepted methods for determining  
17       those common costs?

18              A       I do.

19              Q       Those methods are -- the first method you  
20       talked about is a Direct Assignment Method?

21              A       Yes.

22              Q       And the second method is a General

1 Allocation Factor?

2 A Yes.

3 Q And that's a general labor allocator; is  
4 that correct?

5 A Typically, that's how I've seen it done,  
6 yes.

7 Q And is it correct -- is it a fair  
8 characterization of your testimony regarding direct  
9 assignment that direct assignment is used where  
10 feasible and uses an allocator that best effects cost  
11 causation where direct assignment is not feasible?

12 A Generally, that's what it says. It is my  
13 view, and I think it's shared in some of the  
14 literature that where feasible and where the evidence  
15 allows one to do so, it's most accurate to use a  
16 direct assignment methodology.

17 And in instances where evidence,  
18 sufficient evidence, isn't available, then some other  
19 form, generally, a general allocator or labor  
20 allocator is used; one that would best determine the  
21 cost-causative nature. But both studies attempt to  
22 find the proper cost-causative nature in the case of

1     general, intangible plant or what gives rise to such  
2     costs.

3             Q     Sure. Thank you. I appreciate that  
4     explanation.

5                     If you could expand a little bit  
6     though on the general allocation factor. As I look  
7     at your testimony here on Lines 344 to 345?

8             MR. BERNET: You are on Page 16?

9             MR. BRADY: I'm on Page 16 now, yes.

10     BY MR. BRADY:

11             Q     Is it fair to characterize your testimony  
12     here that the general labor allocator is a method  
13     that assumes that the functional use of the general  
14     plant and intangible plant is generally proportional  
15     to the utilities to which the general Utility's labor  
16     costs are charged?

17             A     Yes, that's what it states.

18             Q     So then with respect to general and  
19     intangible plant, do you believe that direct  
20     assignment is a more accurate method than a general  
21     labor allocator?

22             A     Yes, I do.

1 Q A functional general --

2 A Yes, I do.

3 Again, provided there is sufficient  
4 evidence to make such a determination.

5 Q What about with respect to AG expenses, do  
6 you believe that direct assignment is a more accurate  
7 method than a general labor allocator to functional  
8 AG expenses?

9 A Yes, with the same caveat.

10 Q Thank you.

11 Switching topics. You're familiar with  
12 the fact that ComEd has divested itself of generation  
13 plant back in 2001, correct?

14 A That's correct.

15 Q And is it your understanding that that  
16 divestiture was a business decision by ComEd?

17 A I believe it was, yes.

18 Q Would you agree that that decision on --  
19 that decision was made in the interest of both  
20 shareholders, as well as, customers?

21 A I don't have an exact knowledge as such,  
22 but I would assume so.

1           Q     With respect to that divestiture, let's  
2     start with this, would you agree that the delivery  
3     rates should not go up solely because the Company  
4     made a business decision to divest generation?

5           A     I don't know if I could make a categorical  
6     agreement with that. There's just so many variables  
7     within. I think that my testimony is quite clear  
8     that rates should be set based on the utility's cost  
9     of providing service whatever that may be.

10          Q     Well, let me put it this way: If there was  
11     no other change that had occurred in circumstances  
12     other than the divestiture of production, would the  
13     delivery rates go up?

14          A     In theory, it likely should not.

15                     But, again, that's a function of how  
16     the delivery service revenue requirement is  
17     calculated. But by that I mean -- as long as we are  
18     on the subject, we'll talk about it.

19          Q     That's okay.

20          A     All right.

21          Q     We are running late. We want to try to  
22     wrap up.

1           A     I understand.

2           Q     Since the Company has divested generation,  
3     should that divestiture on its own justify raising  
4     the general and intangible costs functionalized  
5     distribution?

6           MR. BERNET: Objection; asked and answered.

7           MR. BRADY: I don't believe it was. I was  
8     asking about --

9           MR. BERNET: It was the same question.

10          MR. BRADY: Pardon?

11          MR. BERNET: It was the same question he just  
12     asked a few minutes ago.

13          MR. BRADY: I was asking about delivery rates.

14          JUDGE DOLAN: What are you asking about now?

15          MR. BRADY: General intangible costs.

16          JUDGE DOLAN: Overruled.

17          THE WITNESS: Is it possible to read that  
18     question back please.

19                                 (Whereupon, the record was read  
20                                 as requested.)

21          THE WITNESS: On its own, I would generally not  
22     expect it to change much. But I believe that that



1 means also that depending on how the determination of  
2 what the delivery service revenue requirement is pre,  
3 pre-divestiture and post-divestiture actually reflect  
4 the correct assignment of costs for delivery  
5 services. And I think that's what's the issue here

6 BY MR. BRADY:

7 Q So are you saying -- but that would require  
8 a change; would it not?

9 A Well, as we all know, I think I've stated  
10 in my rebuttal testimony as to let's take general  
11 intangible plant, let's take the two methods of  
12 allocation, my rebuttal testimony says, if they both  
13 produce the same number, we wouldn't be having the  
14 discussion that we are having.

15 So the issue is what was the more  
16 appropriate means or method, what was the more  
17 appropriate method for determining what the delivery  
18 service requirement was pre-divestiture and  
19 post-divestiture.

20 If you had simply a change in the  
21 allocation method, all other things equal, the  
22 delivery service requirements could go up or it could

1 go down just by nature of allocation methods.

2 Q But that's if there is a difference in the  
3 allocation methods?

4 A Yes.

5 Q But if there is not a difference in the  
6 allocation methods, would or should the intangible  
7 and general costs functionalized distribution go up?

8 A If there was no, if there was no change in  
9 the allocation methods, and the allocation method was  
10 an appropriate measure of the cost-causative nature,  
11 I would not expect it to change much.

12 Q And in what instance would it not be  
13 appropriate?

14 A Well, I think, you know, we're going to  
15 have to go in some of the facts in 01-0423, which I  
16 explained in my testimony.

17 The allocation method used for general  
18 and intangible plant in 01-0423 was highly divergent  
19 from a result from a direct assignment so much so  
20 that we believe inappropriately, as I stated in  
21 rebuttal and surrebuttal, in my testimonies in this  
22 proceeding, that it overstated the amounts assigned

1 to production.

2 I think that the Commission,  
3 recognizing that there was to be a divestiture, there  
4 was going to be actual physical transfer of assets  
5 out of ComEd into the other Exelon entities, I think,  
6 perhaps, they recognized that issue when they said  
7 that for purposes of the proceeding in 01-0423 and  
8 not giving any prejudgment to the evidence in future  
9 cases, that it was deciding the issue in that case on  
10 the basis of the general labor allocator.

11 Q You were just talking about 01-0423?

12 A Yes.

13 Q So you've reviewed that docket?

14 A I participated in that docket.

15 Q And did you participate in the first

16 ComEd's first delivery service rate case?

17 A I did not.

18 Q Okay. Did you -- are you familiar with that  
19 docket?

20 A I was more familiar with it years ago than  
21 I am today, but I have some general recollection of  
22 it.

1           Q     With respect to general and intangible  
2     planning, is it your understanding that in the past  
3     the Commission has concluded that a general approach  
4     is a second-best approach for general plant?

5           MR. BERNET: Sean did you say, "general  
6     approach"?

7           MR. BRADY: Yes.

8           MR. BERNET: Do you mean, general labor  
9     allocator?

10          MR. BRADY: Yeah, I guess it was general labor  
11     allocator.

12          THE WITNESS: In 99-0107, they said it was the  
13     second-best approach. I know I have a quote in one  
14     of my rebuttal testimonies.

15                    Do you have a cite to that in the  
16     order anywhere that might help me find it? I think I  
17     quoted that somewhere.

18     BY MR. BRADY:

19          Q     You did. It was in your rebuttal testimony  
20     on Page 13, Lines 286 and 287.

21          JUDGE DOLAN: Sean, you said rebuttal or  
22     surrebuttal?

1           MR. BERNET: Can we have the question back again  
2     please.

3                                 (Whereupon, the record was read  
4                                 as requested.)

5           THE WITNESS: I know I referred Alan Heintz.  
6                                 Can you repeat the question please.

7                                 (Whereupon, the record was read  
8                                 as requested.)

9           MR. BERNET: But by general approach, you mean  
10    general allocator, right?

11           THE WITNESS: Yeah, I'm familiar that it's in  
12    one of the orders. I'm just trying to get straight  
13    in my head what it is. I think it's because I  
14    reference Alan Heintz with that particular. And I  
15    think he has a quote in his testimony.

16                                 And if my recollection is correct then  
17    that's from the 99-0013 docket, and I don't think  
18    that that was a ComEd docket.

19    BY MR. BRADY:

20           Q     Well, isn't that what you said in your  
21    testimony on Line 286?

22           A     Yes.

1           Q     The general labor approach is generally  
2     considered the second-best approach?

3           A     First, that's my opinion.

4                     And, second, I do think the Commission  
5     has had some language in an order like that.  I  
6     believe it was in reference docket 99-0013.

7           Q     Thank you for that clarification.

8                     So isn't it true then that in each of  
9     the Company's previous delivery service rate cases,  
10    99-0117 or it 01-0423, the Commission adopted a  
11    general labor allocator for general plant?

12          A     I know it did.  It did not -- it adopted a  
13    general labor allocator in 01-0423.

14                     And 99-0117, I'm drawing a blank.

15          MR. BERNET: Sean, do you have a cite in his  
16    testimony where he talks about the '99 case?

17          MR. BRADY:  I --

18          JUDGE DOLAN: 288 to, it's right underneath  
19    there.

20          THE WITNESS: That's where I make the  
21    statement.  I'm just trying to get the specific to  
22    the ComEd Docket 99-0117.  I'm trying to recollect if

1     that was -- general plant was done on labor allocator  
2     or direct assignment. I want to say it was labor  
3     allocator, but I'm not 100 percent sure, as I sit  
4     here.

5     BY MR. BRADY:

6             Q     Given your uncertainty maybe -- I'm sorry.  
7                     Are you still looking?

8             A     I was just thumbing through.

9             MR. BERNET: He was looking through your  
10     testimony where he talks about the assignment  
11     approach in 99-0117? Or do you have a copy of the  
12     order?

13            MR. BRADY: I do have a copy of the order.

14            MR. BERNET: That would help.

15            MR. BRADY: I copied the front page of the order  
16     and then where they discuss the conclusion.

17            THE WITNESS: This confirms my original thought  
18     that in 99-0117, I thought the Commission did use a  
19     general labor allocator and they did.

20            MR. BRADY: Great. Thank you.

21            THE WITNESS: I'm sorry. For the allocation of  
22     general planning. That's what we're talking about.

1           MR. BRADY: Yes, exactly.

2       BY MR. BRADY.

3           Q     Now, isn't it true that the Commission had  
4       rejected ComEd's proposed direct assignment approach  
5       to functionalize general plant in those cases?

6           A     In those particular cases, yes, they did.

7           Q     Are you aware of -- are you aware of any  
8       delivery service rate case -- let me restate that.

9                       Are you aware of any delivery service  
10      rate case in Illinois where the Commission adopted a  
11      direct assignment approach for general and intangible  
12      plant?

13          A     You know, my knowledge is not exhaustive.  
14      None immediately call to mind as their final decision  
15      was to adopt the methodology for purposes of the  
16      particular or respective proceeding it was in. I do  
17      know that they never rejected the concept. They have  
18      been specific about that.

19          Q     What was the last part?

20          A     The Commission has not rejected the concept  
21      of direct assignment of general plant. And they have  
22      been specific about that in orders.



1           Q       Thank you. I believe you talked about  
2   that in your testimony, as well.

3           A       I do.

4           Q       Switching gears a little bit to talk about  
5   A&G expenses.

6                       Going back to your direct testimony,  
7   Page 27, Line 589, starting at 589.

8           A       I have it.

9           Q       There it says, For purposes of this  
10   proceeding because not all of the necessary data to  
11   conclusively determine the direct assignment of  
12   ComEd's 2004 A&G expenses are readily available, the  
13   allocation of A&G expenses is based on the 2004  
14   relationship of total delivery services, and then in  
15   quotes, open quote, "distribution and customer  
16   related" close quotes, ComEd wages and salaries  
17   included in O&M expense to the total ComEd wages and  
18   salaries included in O&M expense.

19                       Can you briefly explain O&M.

20          A       Sure.

21                       O&M is the acronym for operation and  
22   maintenance expenses. Operation and maintenance

1 expenses are those activities that ComEd undertakes.  
2 They're not capitalized costs. They're expense  
3 costs. And they relate to, generally, repairs,  
4 day-to-day operational activities for a  
5 fully-integrated utility for production, transmission  
6 distribution and customer activities, including A&G.

7 In ComEd's case now that's just  
8 transmission and distribution customer, A&G.

9 Q So O&M expenses, they cover customer  
10 accounts?

11 A Yes.

12 Q Do they also cover customer service and  
13 information?

14 A Yes, they do.

15 Q And distribution?

16 A Yes.

17 Q Are those called considered functions or  
18 how would you -- what would you actually refer to  
19 those as?

20 A I think they're generally known as  
21 functional accounts or functional activity.

22 Q Okay. Now, going back to the quote from

1 Lines 589 to 594, this quote talks about the  
2 allocation of A&G expenses, correct?

3 A It does.

4 Q And it describes the general labor  
5 allocator that you use for A&G expenses, correct?

6 A For this proceeding, yes.

7 Q And do you consider the Company's proposed  
8 general labor allocator to be a reasonable approach  
9 for functionalizing the A&G expenses?

10 A Well, I guess I do because as I state in  
11 that, in the lines that you cite, our preference,  
12 always our preference, as we think the most accurate  
13 way is directly assign it. As I said, ad nauseam  
14 now, you know, as long as you have all the evidence  
15 to be able to do that accurately.

16 The assessment was for 2004. Our  
17 books and records did not provide sufficient evidence  
18 for us to do that. So consistent with the two general  
19 approaches for allocating or functionalizing A&G  
20 costs, we selected the next-best approach or what we  
21 thought to be the next-best approach, which we was  
22 general labor allocator.

1                   So absolutely at the end of the day,  
2   it's reasonable, not our preferred method.

3           Q     Okay. Would you agree that the Company's  
4   proposed general labor allocator uses labor costs  
5   from direct O&M accounts to allocate A&G expenses?

6           A     It does.

7           Q     Would you agree that ComEd's labor  
8   allocator assumes A&G expenses are related to the  
9   nonA&G and O&M labor costs?

10          A     I'm not sure I follow that question.

11                   I'm sorry. Could you read that back.

12                               (Whereupon, the record was read  
13                               as requested.)

14          THE WITNESS: Yeah, well, generally what the  
15   methodology says is that if you are going to use the  
16   general labor allocator, the assumption is that the  
17   common cost in this case, the A&G costs, are  
18   proportional to the salary cost, wage cost, that are  
19   charged to the nonA&G or the direct O&M activity or  
20   functional costs of distribution customer and  
21   transmission.

22          Q     The functional counts that you just listed

1       there at the end?

2               A       Yes.

3               Q       Now, previously, when we first started our  
4       discussion and throughout you mention preferred  
5       direct because it's more accurate. Since the  
6       Company's using a general labor allocator in this  
7       case for A&G expense, is it fair to say that it's  
8       functionalization of A&G expenses is not as accurate  
9       in this case as in its last delivery service rate  
10      case?

11              A       It's difficult to prove, but my own opinion  
12      is that the direct assignment is always the most  
13      accurate. So I guess I would have to agree with the  
14      presumption then that what I consider to be the  
15      second-best approach is a little bit less accurate,  
16      yes.

17              Q       Thank you.

18                      Going back one page to Page 26, Lines  
19      552 to 553. You describe the major A&G expenses  
20      being human resources, finance, legal, supply,  
21      management and information technology.

22                      Do you see that?

1           A     I do.

2           Q     Now, you're familiar with BSC, correct?

3           A     Yes, I would say so.

4           Q     And BSC provides a number of these  
5 functions for ComEd, doesn't it?

6           A     Some, but not all, yes.

7           Q     On Lines 573 to 574, which is on Page 27,  
8 let me know when you're there.

9           A     I'm there.

10          Q     It says, ComEd's total unadjusted A&G  
11 expenses as reported in its 2004 FERC Form 1 are 338  
12 million of which approximately 47 percent are for  
13 services provided by BSC.

14                     Do you see that sentence?

15          A     I do.

16          Q     Who else besides BSC performs those  
17 functions under A&G?

18          A     Some are not functions.

19                     There is insurance costs, for example,  
20 are in A&G. Pension costs are in A&G. Healthcare  
21 costs are in A&G. Certain legal fees are in A&G.  
22 Outside legal, not BSC. And I don't know that there

1 is rents in A&G. There's -- I don't have the whole  
2 list of accounts with me. But there is a number of  
3 things in A&G other than just services provided, you  
4 know, corporate government services or corporate  
5 support services from BSC.

6 Q So are there a number of companies who  
7 provide those services under A&G expenses for ComEd?

8 A Yeah, I believe so, yes.

9 Q But here on Line 574, it says BSC accounts  
10 for 47 percent of that 348 million, correct?

11 A That's correct.

12 Q Would you consider that to be a significant  
13 share of A&G expenses?

14 A Well, there's a lot of metrics to a  
15 significant share. It is 47 percent of the number in  
16 2004 because we all know BSC didn't exist until 2001.

17 So is it significant compared to other  
18 years, for example, when those services were done  
19 inside ComEd by internal ComEd people such that the  
20 numbers, you know, are relatively close, it's just  
21 that instead of it being ComEd employees now, it's  
22 BSC employees. I haven't done that study. I think

1 Katie Houtsma and others speak --

2 Q That's not where I was going.

3 A Oh, I'm sorry.

4 Q 47 percent versus 100 percent, is that  
5 100 percent being 348 million and 47 percent of that  
6 being attributed to BSC, is that a significant  
7 portion being attributed to BSC?

8 A I can agree that 47 percent is significant.

9 Q Is it your understanding that one of the  
10 Exelon subsidiaries receiving BSC services is an  
11 Exelon Generating Company?

12 A As far as I know they do, yes.

13 Q Do you know how BSC costs are allocated and  
14 directly assigned between ComEd and Exelon Generating  
15 Company?

16 A No. Only from what I read out of Katie  
17 Houtsma's testimony.

18 MR. BRADY: I have no further questions for  
19 you. I believe Ms. Scarsella does.

20 THE WITNESS: Thank you.

21

22



1 CROSS EXAMINATION

2 BY

3 MS. SCARSELLA

4 Q Good evening.

5 A Good evening. I expected it, by the way.

6 Q As Mr. Brady said, my name is Carla

7 Scarsella. I'm also one of the attorneys

8 representing Staff.

9 I do have a couple questions for you.

10 One of the areas I would like to cover is incentive

11 compensation. In your rebuttal and surrebuttal, you

12 respond to Staff testimony regarding incentive

13 compensation, correct?

14 A I do.

15 Q Can I have you turn to your rebuttal

16 testimony, ComEd Exhibit 19.0, Page 49, Lines 1,083

17 to 1,084.

18 A I have it.

19 Q There you state in part, Reductions in

20 expense benefits customers to lower rates, correct?

21 A Yes.

22 (CHANGE OF REPORTER)

1 BY MS. SCARSELLA:

2 Q Can you identify for me any ICC docket  
3 number in any proceeding in which quantified  
4 reductions and expense resulting from incentive  
5 compensation costs have resulted in lower rates  
6 charged to customers?

7 A I believe what -- I don't know that you'll  
8 find any rate decreases -- decrease Commission orders  
9 in the recent past. So I guess to answer your  
10 question, I would have to say that lower operating  
11 expenses benefit customers because rates would have  
12 been higher without such reductions.

13 Q So your -- just to understand your answer,  
14 you're not aware of any ICC proceeding in which lower  
15 costs resulted in decreased rates?

16 A Well, by definition, lower costs in total  
17 should lower rates. But if we're solely -- if it  
18 were solely fixed on a -- on one particular component  
19 of the company's costs and other costs are going up,  
20 then, obviously, no.

21 Those lower costs will not produce a  
22 lower rate overall because other costs negate those

1     and it just keeps the total increase from being less  
2     than it otherwise would have been.

3             Q     Back to my original question, you're then  
4     not aware of any proceeding in which that resulted?

5             A     I'm not aware of any Commission rate  
6     decrease orders in the recent past.

7             Q     Can you quantify the reduction in expenses  
8     in this proceeding that occurred due to the  
9     incentives of the incentive compensation targets?

10            MR. BERNET:   I'm going to object to that.   I  
11     think it's beyond the scope.

12            MS. SCARSELLA:   He testifies as to the targets.  
13     The quote I just read, he states, Reductions in  
14     expense benefits customers through lower rates.   I'm  
15     actually asking him if he can quantify that in this  
16     proceeding.

17            JUDGE DOLAN:   Overruled.

18            THE WITNESS:   I think other witnesses, in fact,  
19     do state the operating expense reductions that have  
20     occurred through BSC and other efficiency measures  
21     such as Exelon way.   I don't know that I have a  
22     number quantified in my testimony.

1 BY MS. SCARSELLA:

2 Q Can you refer me to those other witnesses'  
3 testimonies where the amount is quantified?

4 A I think Mr. Costello talks about reductions  
5 in millions. I think Ms. Houtsma has something about  
6 reductions in BSC costs is my recollection.

7 Q And they quantify the results?

8 A And I think Mr. DeCampi also talks about  
9 efficiencies and reductions in costs.

10 Q Can you quantify the rates that the company  
11 would have proposed in this proceeding were it not  
12 for the reduction in expenses that resulted in --  
13 from the incentive compensation?

14 A I don't have any number to do that. If I  
15 did, I could.

16 Q So your answer is no, you cannot quantify  
17 for me?

18 A Not without one specific number that says  
19 the reduction was X.

20 Q I'd like to refer you now to actually two  
21 sentences in your surrebuttal testimony, which is  
22 ComEd Exhibit 36.0. The first is on Page 10, Lines

1       216 through 218.

2           A     I have it.

3           Q     I'm sorry. I need to find it. All right.

4                   At Line 216, you state, Because ComEd  
5 does not seek recovery of the compensation expense  
6 for any of its highest level employees in this case,  
7 the 2004 LTIP costs for these employees are removed  
8 as part of ComEd's adjustment to test year A&G  
9 expenses; correct?

10          A     I do.

11          Q     And the very next sentence is the other  
12 sentence I'd like to refer you to. There you  
13 state -- and it's lines 219 through 222 -- the  
14 compensation expense under the LTIP that is included  
15 as incentive compensation in the test year expenses  
16 in this proceeding amount only to 1.2 million of the  
17 total incentive compensation expense for which ComEd  
18 seeks recovery; correct?

19          A     Correct.

20          Q     Can you reconcile the first sentence in  
21 which you state the LTIP is not included in test year  
22 expenses with the second sentence in which you state

1 LTIP is included in the test year expenses?

2 A The first sentence refers to the expense  
3 for the highest level employees who are removed from  
4 the test year A&G expenses. The two sentences are  
5 not in conflict with each other.

6 Q So is the second sentence referring to  
7 employees who are included in LTIP but are not highly  
8 compensated?

9 A They're not the -- they're not included --  
10 there's 72 employees or whatever the number is  
11 roughly that people take this LTIP. I think the  
12 total LTIP compensation for all employees, all ComEd  
13 employees in 2004 was something in the neighborhood  
14 of \$2.6 million.

15 Of the \$2.6 million, 1.4 is removed  
16 from the revenue requirement in this proceeding and  
17 1.2 is included in the revenue requirement for this  
18 proceeding.

19 Q I just want to try to understand.

20 So there are a group of employees  
21 included in the plan that are not included in the --  
22 as highest level employees that you refer to in your

1 first sentence, there are other employees that for  
2 which costs have been included?

3 A There are employees other than the highest  
4 level employees that we've removed. There are  
5 employees that are eligible under this plan that are  
6 not part of those -- the higher level employees that  
7 we removed.

8 And they -- and not -- and of those  
9 employees that were eligible and actually received  
10 LTIP payments in 2004, that number was \$1.2 million.  
11 And that is in the revenue requirement.

12 Q All right. Now, I believe while you were  
13 speaking with Mr. Brady, you expressed that you are  
14 familiar with Docket 01-0423; correct?

15 A Passionately.

16 Q All right. In that docket, the Commission  
17 disallowed over \$24 million in incentive  
18 compensation; correct?

19 A I don't have the number in front of me.  
20 Sounds about right.

21 Q As a result of that disallowance to  
22 incentive compensation, did ComEd increase its base

1 payroll or other components of its total compensation  
2 package?

3 A Well, on a per employee basis, I would have  
4 to say the base payroll has increased. I'm trying to  
5 remember, given the employee reduction numbers that  
6 have occurred since Exelon way, if on a total basis  
7 base salary expense for ComEd has changed since 2000.

8 I don't have that number here. But  
9 there certainly has been a reduction just due to the  
10 nature of reduction of ComEd employees since 2000.

11 Q Right. But was any increase made as a  
12 direct result of the Commission disallowing  
13 24 million of incentive compensation?

14 A I have no knowledge of that.

15 Q Who would have knowledge of that?

16 A Who that would be a witness in this  
17 proceeding?

18 Q Yes.

19 MS. SCARSELLA: If you don't, can we make an  
20 on-the-record data request for that information?

21 MR. BERNET: We'll let you know.

22 MS. SCARSELLA: You'll let us know the answer



1 to my question?

2 MR. BERNET: Yeah.

3 MS. SCARSELLA: All right.

4 BY MS. SCARSELLA:

5 Q All right. On to the next topic.

6 In your surrebuttal testimony, you  
7 respond to the Staff testimony regarding  
8 non-manufactured gas plant costs; correct?

9 A Yes.

10 Q To make things easier for the court  
11 reporter, non -- the acronym for non-manufactured gas  
12 plant costs is non-MGP costs?

13 A It is.

14 Q Okay. Beginning on Page 51 of your  
15 surrebuttal testimony, ComEd Exhibit 36.0, you  
16 discuss the volatility of non-MGP costs; correct?

17 A I do.

18 Q Do you know how the volatility of the  
19 non-MGP costs compares to the volatility of ComEd's  
20 other administrative and general costs?

21 A On a dollar basis or a percentage basis?

22 Q On a percentage basis.

1           A     I have -- boy, I think I have something  
2     here. I have as ComEd Exhibit 19, Schedule 18, a  
3     listing of MGP and non-MGP costs that shows trends,  
4     both actual and forecast, from 2001 through 2026.  
5     Assuming for the moment that the MGP line, the top  
6     line of that --

7           Q     Can I interrupt you for a moment. Can you  
8     tell me what schedule that is again?

9           A     I have it as Schedule 18 of my rebuttal  
10    testimony.

11          Q     Okay. All right. I have it.

12          A     And so from 2001 through 2032, ComEd lists  
13    current -- or its actual and current forecast  
14    expenditures for MGP superfund sites and leaking  
15    underground storage tank sites during that time.

16                   And assuming that the non-MGP costs  
17    are the last two lines, superfund and -- acronym  
18    L-U-S-T, I would say looking at the dollar amounts of  
19    those relative to each other, yes, I would consider  
20    those volatile.

21          Q     I guess maybe I didn't state my question  
22    correctly. I asked whether the volatility of the

1 non-MGP costs -- and I asked -- let me start again.  
2 Strike that.

3 Do you know how volatility of the  
4 non-MGP costs compares to the volatility of ComEd's  
5 other administrative and general costs?

6 A Yeah. Based on my experience, I think also  
7 based on another schedule I have in my rebuttal,  
8 which is Schedule 14 which shows the volatility in  
9 healthcare costs from 1994 through 2004. The  
10 healthcare costs are also A&G costs.

11 Q Well, it's only one A&G cost; right? It's  
12 not all of them?

13 A It's the one that I directly give an  
14 example of in the testimony. Let me do one more  
15 thing.

16 On Schedule 19 -- or I'm sorry, on  
17 Schedule 12 of my rebuttal testimony, I show the A&G  
18 account activities by account from 2000 through 2004.  
19 And I think that you can certainly see some  
20 volatility in the numbers there for almost every line  
21 item there.

22 Q So the non-MGP costs are no more volatile

1     than the other A&G costs?

2           A     I don't know that that's true.  I think  
3     that what makes non-MGP volatile is their  
4     unpredictability and their unstability and their  
5     difficulty to forecast.

6                     A&G costs can be volatile in dollar  
7     amounts, but you still know of things happening that,  
8     you know, you can generally forecast what they will  
9     be.  Non-MGP, which is site specific, technology  
10    specific, legislative specific, guidelines on what  
11    you do and when you do it and how you do it,  
12    certainly makes them unpredictable, unstable, and  
13    difficult to forecast.

14           Q     But given the volatility of the A&G costs  
15    in Schedule 12 of your rebuttal testimony, those have  
16    -- those -- were you able to budget those amounts and  
17    were they divergent from the amounts budgeted for  
18    those years?

19           A     Well, they are forecast at what the current  
20    expectation of the site-specific remedy is going to  
21    be.  But unlike any -- unlike many other costs, that  
22    forecast can change tomorrow because of technology,

1     because of laws, because of a lot of things.

2                     And so they're not -- you can forecast  
3     them, but you can forecast them on today's knowledge,  
4     which tomorrow could be quite a bit different.

5             Q     All right. On to our final topic,  
6     construction Work In Progress. Mr. Hill, you  
7     addressed Staff's testimony relating to Construction  
8     Work In Progress; correct?

9             A     I do.

10            Q     And, once again, for the court reporter, an  
11     acronym for Construction Work In Progress is C-W-I-P  
12     or CWIP; correct?

13            A     Yes.

14            Q     On Page 33 of your surrebuttal testimony,  
15     ComEd Exhibit 36.0, Lines 739 to 741, you state --

16                   MR. BERNET: I'm sorry. What was that page?

17                   MS. SCARSELLA: I'm sorry. It's Page 33 of the  
18     surrebuttal, Lines 739 through 741.

19     BY MS. SCARSELLA:

20            Q     You state, The presence of these types of  
21     costs long after the 2004 projects have been placed  
22     in service does not support his recommendation to

1       exclude CWIP from rate base; correct?

2           A     I do.

3           Q     This is more of a point of clarification.

4       When you say "his recommendation," are you referring  
5       to Staff Witness Griffin?

6           A     I think this particular piece of testimony,  
7       this particular line does, in fact, refer to  
8       Mr. Griffin as the "he" in that line.

9           Q     Well, then can you refer me to where  
10       specifically in Mr. Griffin's testimony he states  
11       that CWIP must be excluded from rate base?

12          A     He doesn't. He removes the pro forma  
13       additions from rate base claiming they're already in  
14       CWIP.

15          Q     I'm sorry. Can you repeat your answer one  
16       more time.

17          A     I'll restate it. What Mr. Griffin says is  
18       he has determined there is a double-count of  
19       projects. He says the same projects that are in  
20       pro forma additions are the same projects in CWIP.

21                   He chooses, having found a  
22       double-count, to remove the pro forma additions.

1 Under his recommendation, he could have done either.

2 So, in essence, it's the same as removing CWIP.

3 He says -- he basically says, you  
4 know, the CWIP should not be allowed because -- in  
5 addition to the pro forma additions simply because  
6 the components of the CWIP in the test year that's  
7 used as the test year value are the same. And, of  
8 course, they have to be the same.

9 Q But Mr. Griffin, does he remove -- he  
10 removes CWIP from in plant -- plant in service and  
11 not rate base; correct?

12 A He chooses, based on the double-count, to  
13 remove one or the other. And he chooses pro forma  
14 additions. Mr. McGarry chose, for the very same  
15 arguments, the exact same arguments as Mr. Griffin,  
16 chooses to remove the CWIP.

17 Q Now, it's your position that CWIP is  
18 properly reflected in ComEd's proposed rate base;  
19 correct?

20 A Absolutely, it is.

21 Q Can you please turn to Page 34 of your  
22 surrebuttal testimony.

1           A     I have it.

2           Q     Lines 761 through 763.

3           A     I have it.

4           Q     You state, If the Commission does not agree  
5 with ComEd's explanations that no such  
6 double-counting exists, the Commission should adopt  
7 Mr. McGarry's proposal to remove the non-interest  
8 bearing CWIP from rate base; correct?

9           A     I do.

10          Q     Now, that would result in zero CWIP in rate  
11 base; correct?

12          A     I believe that's Mr. McGarry's position.

13          Q     Now, why do you believe that it would be  
14 more appropriate to remove double-counted projects  
15 from CWIP in rate base than plant additions?

16          A     Well, first of all, they're not  
17 double-counted projects. That's what my whole  
18 testimony is about.

19          Q     All right. Well, let's take that  
20 characterization out of there.

21                         Why do you think it's more appropriate  
22 to remove these projects at issue from CWIP than from



1 plant in service?

2 A Let me, if I may, first and foremost, the  
3 line that we didn't read, However, I stress that the  
4 basis for their conclusions are flawed, are  
5 inappropriate, and unfair and still --

6 Q Given that, obviously.

7 A The -- so with the caveat that neither  
8 should occur, from a pure recovery of just and  
9 reasonable costs for plant that is in service, then  
10 my recommendation would be if the Commission chooses  
11 that -- decides it's going to remove one or the  
12 other, then I believe the plant in service additions  
13 should be -- should remain in rate base, one, because  
14 they're providing electric service to customers  
15 today, two, that its shareholders would be not  
16 allowed to recover then the recovery on those  
17 investments because, as in service, they are  
18 currently being depreciated.

19 Depreciation is the recovery on of  
20 the -- recovery of an on formula. And the  
21 shareholders would be denied recovery of plant in  
22 service if indeed it was the pro forma additions

1     taken out versus the CWIP.

2             Q     We're going to go back to Docket 01-0423 for  
3     my last question.

4                     In that docket, did ComEd propose  
5     including the same projects in both CWIP and  
6     additions to plant in service as was done in the  
7     current proceeding?

8             A     I don't believe so. I read Mr. Griffin's  
9     testimony saying that we did so. And I checked back.  
10    And the one that he said we removed because of it was  
11    a double count, in fact, it was removed because that  
12    plant had been actually placed in service in the year  
13    2000. It should not have been in CWIP in the first  
14    place, and so it was not a double-count in that  
15    instance.

16                    And I think that there's -- I think  
17    there was testimony in that case with respect to  
18    that. If it wasn't testimony, it was data requests.  
19    And my recollection is in that case that there were  
20    very limited number of pro forma additions that went  
21    through March, I believe, of the year following the  
22    test year.

1                   But, in any event, the concept is the  
2     same.   It's not a double-count.   The CWIP represents  
3     investments made by shareholders that they deserve a  
4     return on.

5           Q     Were all -- I'm not sure you answered my  
6     original question.

7                   Were all the projects -- and maybe  
8     this wasn't my original question, but I'll ask it.

9                   Were all the projects in that docket  
10    included in -- that were included in CWIP also  
11    included in plant in service?

12          A     No.

13          Q     Why?

14          A     Well, because the pro forma additions -- as  
15    I said, the pro forma additions in that case didn't  
16    do the pro forma that it -- well, the value -- let me  
17    start over again.

18                   The value of CWIP in rate base in that  
19    proceeding was the same value of CWIP we have in this  
20    proceeding, not in a dollar basis, but in a  
21    conceptual basis.   It represented non-AFUDC bearing  
22    construction projects on the company books at

1 year-end 2000, the test year.

2 The pro forma additions were limited  
3 to the first three months of additions. I believe it  
4 was the first three months of additions in 2001.

5 The -- by nature of the projects being  
6 on AFUDC CWIP, by definition, by definition, they  
7 cannot be non-AFUDC CWIP if they are -- if they have  
8 less than \$25,000 per project or have a construction  
9 period of less than 30 days.

10 So by definition, all non-interest  
11 bearing or non-AFUDC CWIP projects are in service  
12 within about 30 calendar days.

13 MS. SCARSELLA: And with that, I have no  
14 further questions.

15 JUDGE DOLAN: Okay. And with that, we'll be  
16 continued until tomorrow at -- well, 9:00 a.m.  
17 because we have a full day tomorrow, too.

18 (Discussion off the record.)

19 (Whereupon, the above-entitled  
20 proceedings were continued to  
21 March 23, 2006, at 9:00 a.m.)

22